United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

76-7574

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

LOUIS BLECKER and RUTH BLECKER,

Plaintiffs-Appellants,

-against-

LAZARD FRERES & CO., MEDIOBANCA BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., LAZARD FRERES ET CIE, INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, RICHARD E. BENNETT, EUGENE R. BLACK, RAYMOND L. BRITTENHAM, GEORGE R. BROWN, FRANCIS J. DUNLEAVY, RUSSELL F. ERICKSON, HAROLD S. GENEEN, ARTHUR M. HILL, J. PATRICK LANNAN, R. NEWTON LAUGHLIN, JOHN A. McCONE, RICHARD S. PERKINS, HART PERRY, WARREN LEE PIERSON, FELIX G. ROHATYN, TED B. WESTFALL,

Defendants-Appellees.

UNITED STATES COURT OF APPEALS
FILED
JAN 11 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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P/S

APPENDIX

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BENJAMIN BERNSTEIN, etc. -vs- LAZARD FRERES & CO. et al.

JUDGE CONNER 73 CIV. 40

DATE	PROCEEDINGS
Sep21-73	Filed complaint and issued summons.
Oct 15-73	Filed Summons & Marshal's Returns. Served Intnl Telephone&Telegraph Corp by : John J Navin,V P on 10/3/73 Lazard Freres & Co by Thomas F X.Mullarkey,gen.Ptner on 10/4/73
Oct.17-73	Filed Certificate of Mailing Summons and Complaint by Registered Mail,return receipt requested,addressed to: Mediobanca Banca di Credito Finanziario- Societa per Azioni 10 via Filodrammatici Milan, Italy Receipt #453669 dte-10/10/73 Reg. " " ret dte-10/15/73 Lazard Freres et Cie 5 Rue Pilet-Will Paris ,France Receipt#453670 dte-10/10/73 Reg. " " rtn 10/16/73 Les Files Dreyfus et cie.S.A. 14-16 Aeschenvorstadt Basel ,Switzerland Receipt#453671 dte-10/10/73 Reg. " " rtn " 10/15/73
Oct.29-73	Filed Pltffs Interrogs Set.No.1,to International Telephone and Telegraph Corporation("ITT")
Oct.29-73	Filed Pltffs Interrogs Set.No.1 to Lazard Freres & Co(LAZARD)
Nov.2-73	Filed Stip & Order extending time for defts to answer to 11/26/73. Tenney,J.
Nov.19-73	Filed Deft.International Tel&Telegraph Corp.Affdvt&Notice of Motion to stay action pending disposition of prior action entitled Benjamin Bernstein v.Mediobanca di Credito Finanziario-Societa Per Azioni,et al 73 Civ.3549 ret.11/26/73.
Nov.21-73	Filed Stip & Order extending time for Deft.Intnl Tel.&Telegraph Corp. to answer to 12/26/73.Tenney,J.
Nov 23 73	Filed Pltff s Affdvt&Memorandum in opposition to motion to stay actio
Nov.23-73	Filed Stip & Order extending time of defts Lazard Freres & Co., Mediobanca,S.P.A.,Les Fils Dreyfus et Cie,S.A.,and Lazard Freres et Cie to answer to 12/26/73;also extending time of Deft Lazard Freres & Co to Pltffs'Interrogs Set No.1 to 12/26/73. Tenney,
Nov.27-73	Filed Reply of Deft.International TelephoneYTelegraph Corp.to Pltff's Memorandum in opposition to Motion to stay action.
Dec.11-73	Filed MEMORANDUM OPINION#40108. Consolidation of the cases is not the best remedy,etc.as indicated.Motion to stay instant action is granted.SUBMIT ORDER in conformity with this opinion within 15 days of its filing on 5 days notice.TENNEY,J.(n/m)
Dec.17-73	Filed Pltffs Affdvt & Notice of Motion for reargument or reconsideration or for certification .
Dec.26-73	Filed deft's (IT&T Corp) memorandum in opposition to motion for , reargument.
Dec.26-73	Filed affidavit of J.H. Schafer in support of ITT'S opposition to, reargument.
Jan.2 74	Filed pltff's affidavit & memorandum in response to affidavit & , memorandum of deft. ITT.
Jan 14-74	Filed ORDER.Deft Intnl Tel&Tel.Corp's motion is granted.Action is stayed pending final disposition.TENNEY,J.(mn)
[illegible]	25-74 Memo Cr on Coord Clk.Act on transferred to Lawrence docket.

LECKER ET ANO VS. LAZARD FRERES & CO ET AL

JUDGE-CONNER

v.4057

CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS	AM REPOR ENDOR RET
Jan.18-74	Filed MEMORANDUM OPINION#40247. Pltff's motion for reargument is denied and the Court's prior decision is adhered to Since Court's prior ruling does not meet requirements, etc.pltff's application for certification to Court of Appeals is denied.TENNEY,J.(Mn)	
Jan.14-74	Filed Stip & Order extending time for defts Mediobanca,S.p.A., Les Fils Dreyfus et Cie,S.A. and Lazard Freres Et Cie to 2/4/74;also extending time of deft.Lazard Freres&Co to respond topltffs interrogs Set.No.1 to 2/4/74.TENNEY,J.	
Jan.21-74	Filed Affdvt of L.B.Bernstein for deft.ITTCorp.	
Jan.21-74	Filed Stip & Order extending time for defts .Lazard Freres & Co.Mediobanca,S.p.A.Les Fils Dreyfus et Cie,S.A.and Lazard Freres et Cie to answer to 1/4/74;also extending time of Deft.Lazard Freres & Co to respond to Pltffs'Interrogs ,Set No.1 to 1/4/74.TENNEY,J.	
Jan.30-74	Filed Pltffs Affdvt&Notice of Motion for an order vacating Order of Court dtd 1/14/74(no date mentioned)	
Feb.4-74	Filed Memo End.on Notice of Motion re:order vacating order dtd 1/14/74 staying action,etc.Pltff has moved for an order vacating previous opinion of this Court dtd 1/14/74 staying instant action.Court can find no reason for vacating either original or previous denial of pltff's motion to reargue.Motion denied.SO ORDERED.TENNEY,J.(mN)	
Feb.27-74	Filed true copy of USCA Order for petition for writ of mandamus is denied.AD Fusaro	
Mar.11-74	Filed Pltff's Notice of filing of Amended complaint.	
Mar.12-74	Filed Motion to vacate stay&for leave to add parties Deft,of Memorandum of Law,Amended complaint & exhibits.ret. 3/25/74.	
Mar.29-74	Filed Pltff's Affdvt&Memorandum of Law in reply to Deft.ITT's opposition to pltff's motion to vacate stay entered 1/14/74.	
Apr.18-74	Filed Defts Suppl.Memorandum in opposition to Pltffs's Motion to vacate stay of action.	
Apr.23-74	Filed Affdvt of A.B.Fitt forP Pltff ;Affdvt of Mathias L. Spiegel for Pltff&Memorandum in response to Suppl.Memorandume of Deft.Intnational Tel&Telegraph Corp.in oppo-	

DATE	
Apr.23,74	(contd)sition to Pltffs'motion to vacate stay of action.
May 3-74	Filed MEMORANDUM OPINION#40667.Pltffs'motion to add parties deft and to serve process upon them is granted;pltffs' motion to vacate the stay is denied.TENNEY,J.(mn)
May 7-74	Filed Unsigned Order.Order to Show Cause to Consolidate pursuant to Rule 42(a)FRCP.
May 7-74	Filed Memo End.on Order to Show Cause to Consolidate pursuant to Rule 42(a)FRCP.Application denied.So Ordered. TENNEY,J.
May 7-74	Case Reassigned to Judge Connor,Unit 3.
May 9-74	Filed memo endorsed on show cause order filed 5-7-74. Application denied. So ordered- TENNEY, J. (m/n)
May 20-74	Filed pltffs' notice of appeal from Order entered 5-3-74, denying pltffs' motion pursuant to FRCP 60 (b). Copies mailed to: Paul Weiss Rifkind Wharton & Garrison and Wormser Kiely Alessandroni Mahoney & McCann. Entered 5-29-74 (Rec'd in unit #3 on 5-29-74)
June 24-74	Filed Amended Complaint.
June 27-74	Filed true copy of USCA order- that deftv appellee International Telephone and Telegraph's motion to dismiss appeal is granted . (m/n)
Sept. 4-74	Filed additional summons and return-served the following:
	Harold S. Geneen by William J. Donovan on 7-8-74
	Richard E. Bennett by Janet Mahan on 7-10-74
	John A. McCone by Betty Bethe on 6-27-74
	Richard S. Perkins by Irene Gould on 7-8-74
	R.F. Erickson- UNEXECUTED-7-21-74
	J. Patrick Lannon- UNEXECUTED- 7-1-74
	Francis J. Lunkley by Janet Mahan on 7-10-74
	George R. Brown by Doris Johnson on 6-28-74
	Raymond L. Leitchman by Janet Mahan on 7-10-74
	Hart Perry by Kelly Prendergast on 7-10-74
	Felix G. Rohatyn by S. Wolf on 6-26-74
	Warren L. Pierson- UNEXECUTED -7-17-74
	Arthur K. Hill- UNEXECUTED
	Eugene R. Black on 7-3-74
	R.H. Laughlin on 7-1-74
	Ted B. Westfall on 7-2-74
Jan. 15-75	Filed pltffs' affdvt. of Melvin L. Spiegel and notice of motion for an order vacating the stay of all further proceedings in this case [illegible]

DATE	FILINGS—PROCEEDINGS
Jan. 28-75	Filed memorandum of International Tele.& Telegraph Corp.in opposition to moti to vacate stay of action.
Jan. 29-75	Filed memorandum of defts. Lazarr Freres & Co., Mediobanca S. p.A., Les Fils Dreyfus et Cie, S.A. and Lazard Freres et Cie
Jan. 31-75	Filed pltffs' reply affdvt. of Mathias L. Spiegel and memorandum in support of motion to vacate stay of action.
March 14-75	Filed Memorandum-Opinion # 42046 and Order- for the reasons stated, pltffs. motion, seeking an order vacating a stay of all further proceedings in t case, is denied. So ordered- CONNER, J. (m/n)
June 25-75	Filed pltffs' verification of Amended complaint.
Sept.18-75	Filed pltffs notice of motion to vacate stay of action with memorandum of law attached. Ret. 09-25-75.
Sept.24-75	Filed memorandum of I.T.T.Corp. in opposition to motion to vacate stay.
Sept.25-75	Filed Pltffs' Reply Memorandum re:Bernstein and Blocker co.plai
Dec. 10-75	Filed Memorandum-and Order- Opinion # 43509-- for the reasons stated, pltf motion to vacate the stay is denied, without leave to renew, unless subsequent developments substantially alter the premises upon which this memorandum and its predecessors were based. So ordered -CONNER J./((Rec'd in unit 1-13-76)
04-09-76	PRE-TRIAL CONFERENCE HELD BY CONNER, J.
05-28-76	Filed pltffs' affdvt. and notice of motion for an order to amend and supplement complaint and name additional parties deft. Ret. 6-4-76
05-28-76	Filed pltffs' memorandum in support of motion for leave to file second amend complaint and name additional parties deft.
05-21-76	Filed memorandum of deft. International Telephone & Telepgraph Corp. in opposition to pltffs' motion to amend and supplement co.plaint and name additional parties deft.
06-23-76	Filed Affidavit of Pltffs in support of motion for leave to file amended and supplemental complaint. by Mathias L. Spiegel.
07-29-76	PRE-TRIAL CONFERENCE HELD BY CONNER, J.
07-28-76	Filed Pltff. Notice of Motion and supporting adddvt. for an Order vacating the stay of all futher proceedings. / ret. 8-2-76
07-28-76	Filed Pltf. Memo. in support of Motion to vacate stay.
08-13-76	Filed Deft ITT Corporation's Memorandum in opposition to Pltff's Motion to vacate stay of action.
09-14-76	Filed Pltffs Reply Memorandum in support of pltffs' motion to vacate stay of action.

(CONT'D— TO #5 (OVER)

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
11-01-76	Filed memo endorsed on unsigned OTC for preliminary injunction. Motion denied. So ordered- CONNER, J. (m/n)		
11-03-76	Filed memo endorsed on unsigned Rule 65 (a) FRCP TRO and OTC for preliminary injunction.. Denied. So ordered- CONNER, J. (m/n)		
11-05-76	Filed pltffs' memorandum in support of motion for injunction.		
11-19-76	Filed pltffs' supplemental affdvt. of Mathias L. Spiegel with regard to motion for relief pursuan to Rule 65 FRCP.		
11-19-76	Filed Pltffs Louis Blecker and Ruth Blecker Notice of Appeal to USCA 2nd Circuit from order 11-3-76. m-n to: Paul, Weiss Rifkind Wharton & Garrison, 345 Park Ave. NYC 10022 and Wormser Kiely Alessandroni Mahoney & McCann, 100 Park Ave. NYC 10017.		
11-29-76	Filed Bond No. S 768851 for costs on appeal in the sum of $250.00- Northwestern ational Insurance Co. of Milwaukee, Wisconsin.		
12-21-76	Filed notice that the record on appeal has been certified and transmitted to the USCA on this day.		
12/14/76	Filed letters from Lawson F. Bernstein to the Hon. Charles H Tenney dated: 11/28/73 and 3/9/74		
12/14/76	Filed affidavit of David Cynamon in opposition to Plaintiffs' motion to vacat e stay.		

ORDER STAYING ACTION FILED JANUARY 14, 1974

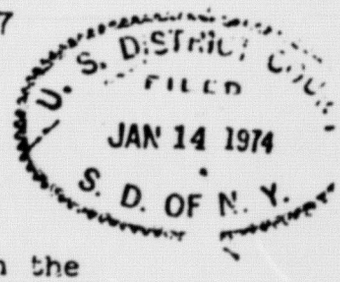
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LOUIS BLECKER, et al.,
Plaintiffs,

v.

LAZARD FRERES & CO., et al.,
Defendants.

73 Civ. No. 4057



ORDER

This cause having come to be heard upon the Motion of defendant International Telephone & Telegraph Corporation that the above-entitled action be stayed pending final disposition of a similar case in this Court entitled Bernstein v. Mediobanca di Credito Finanziario-Societa Per Azioni, et al., 73 Civ. No. 3549, and it appearing to the Court at this time that sufficient reasons for such a stay have been shown,

IT IS HEREBY ORDERED:

1. That defendant International Telephone & Telegraph Corporation's Motion to Stay be, and is hereby, granted.

2. That the above-entitled action be, and is hereby, stayed for all purposes pending final disposition in this Court of the action entitled Bernstein v. Mediobanca di Credito Finanziario-Societa Per Azioni, et al., 73 Civ. No. 3549.

Dated: New York, N.Y.
~~December 21, 1973~~
January 14, 1974

Charles H. Tenney
UNITED STATES DISTRICT JUDGE

OPINION #40247, TENNEY, J. DATED JANUARY 18, 1974
(pp. A7-A10)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

#40247

LOUIS BLECKER and RUTH BLECKER,

Plaintiffs,

-against-

LAZARD FRERES & CO., MEDIOBANCA BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., LAZARD FRERES ET CIE and INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION,

Defendants.

73 Civ. 4057 (CHT)

MEMORANDUM

TENNEY, J.

This case is before the Court on the motion of plaintiffs, Louis and Ruth Blecker, pursuant to Rule 9(m) of the General Rules of the United States District Court for the Southern District of New York, for reargument of defendant ITT's motion to stay (which was granted by this Court on December 19, 1973) or, in the alternative, to certify the Court's ruling for immediate appeal pursuant to 28 U.S.C. § 1292(b). For the reasons set out infra, both motions are denied.

Since the facts are adequately detailed in the previous opinion, Blecker v. Lazard Freres & Co., 73 Civ. 4057 (S.D.N.Y. Dec. 10, 1973), the Court will proceed directly to plaintiffs' contentions. The motion for reargument is based upon two grounds: (1) that the attorney for plaintiff in the companion case of Bernstein v. Mediobanca de Credito Finanziario, S.A.,

73 Civ. 3549 (the case in favor of which the instant action was stayed), is not competent to pursue the best interests of ITT shareholders in a derivative suit since he allegedly also represents class action plaintiffs suing ITT in yet a third related case in the United States District Court for the District of Connecticut, Herbst v. ITT, Civ. 15,500; and (2) that defendant ITT has failed to show the "pressing need" required to stay the instant action. Both arguments are, however, without merit.

The Court agrees with plaintiffs that if Mr. Bernstein (plaintiffs' counsel in Bernstein) represented the class action plaintiffs in Herbst as well as the derivative plaintiff in Bernstein, a serious question of conflict of interest would arise. See, Levine v. American Export Industries, Inc., 473 F.2d 1008, 1009 (2d Cir. 1973). That situation does not, however, present itself in the instant case.

Defendant ITT, in its papers in opposition to this motion, has informed the Court that Mr. Bernstein withdrew from the Herbst case on August 13, 1973, two days prior to the institution of the Bernstein action (Aff. in Opp., ¶¶ 2, 3). Furthermore, Mr. Bernstein has submitted an affidavit, at the request of the Court, confirming ITT's representation. In addition, both affidavits--which are based upon personal knowledge--state that absolutely no settlement discussions have been held and, thus, refute the instant plaintiffs' suggestion of collusion between counsel in Bernstein and defendant ITT. This Court,

therefore, remains convinced that the interests of ITT shareholders will be as fully protected in Bernstein as they would be in the instant case.

Turning now to the question of "pressing need", it is, apparently, plaintiffs' contention that this criterion is dispositive of defendant's motion. However, plaintiffs' own authorities are in conflict with this position.

> "A great variety of factors may be involved in determining whether a motion for a stay should be granted. Among those factors are: whether the substantive and procedural rights of the non-moving party will be fully protected, the extent to which identical issues and parties are involved, the relative ease of access to sources of proof, the likelihood that one of the actions will reach an earlier conclusion, ... and the comparative status of the dockets in the competing forums." 38 Moore's Federal Practice ¶ 23.93 at 23-180 , 1803 (2d Ed. 1969).

See also, Fergusen v. Tobah, 289 F.2d 665, 672 (2d Cir. 1961).

Furthermore, this Court still believes that the obvious additional financial and manpower burdens resulting from the maintenance of two identical suits are within its judicial notice. This belief has been confirmed by the recent filing of voluminous discovery motions in the Bernstein case. Finally, this Court still cannot perceive how the consolidation of two identical suits, pending in the same court and before the same judge, can inure to the benefit of the ITT shareholders. Such a consolidation would unnecessarily complicate an already complex litigation and, most likely, would only serve to retard the judicial process.

Accordingly, plaintiffs' motion for reargument is denied and the Court's prior decision is adhered to. Since the Court's prior ruling does not meet the requirements of 28 U.S.C. § 1292(b), plaintiffs' application for certification to the Court of Appeals is also denied.

So ordered.

Dated: New York, New York
January 18, 1974

Charles H. Tenney
U.S.D.J.

FILED
U.S. DISTRICT COURT
MAY 3 11 57 AM '74
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS BLECKER and RUTH BLECKER,

Plaintiffs,

-against-

LAZARD FRERES & CO., MEDIOBANCA BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., LAZARD FRERES ET CIE, and INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION,

Defendants.

73 Civ. 4057 (CHT)

#40667

MEMORANDUM

TENNEY, J.

This case is before the Court on plaintiffs' motions, pursuant to Fed. R. Civ. P. 21 and 60(b), for (1) an order adding parties defendant and directing service of process upon them and (2) an order vacating the previous order of this Court staying all proceedings herein.[1] See Blecker v. Lazard Freres & Co., 73 Civ. 4057 (December 10, 1973). For the reasons set out infra, the motion to add parties is granted and the motion to vacate the stay is denied.

Since this is the fourth time that this dispute has been before this Court (there having been, in addition to the original motion for a stay, motions for reargument and for vacating the stay), a recitation of the facts will be dispensed with and the Court will proceed directly to the merits of the application.

On March 11, 1974, plaintiffs filed, pursuant to Fed. R.

Civ. P. 15(a), an amended complaint as a matter of course which, plaintiffs contend, asserts a new cause of action[2] not so asserted in either their original complaint or in the complaint filed in Bernstein v. Mediobanca, 73 Civ. 3549 (the case in favor of which the instant action was stayed). This amended complaint serves as the basis for plaintiffs' Rule 21 motion to add as parties defendant those defendants named in the new cause of action who were not so named in the original complaint and to direct that service of process be made upon them. Defendants oppose this motion on the ground that the order directing a stay of all proceedings prohibits plaintiffs from filing an amended complaint.

Defendants, in support of their position, contend that the stay of the instant action has the same effect, vis-a-vis amended complaints, as a judgment on the merits--i.e., that such amendments are within the discretion of the Court and not permitted as a matter of course. While the Court tends to disagree with this analogy, it does find merit in defendants' alternative argument: that the purpose of the stay would be defeated by permitting plaintiffs to amend their complaint without prior approval of the Court. A close reading of Rule 15(a) supports this claim and reveals that an amendment as a matter of course would not be appropriate in the instant case. That rule reads, in pertinent part:

> "(a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted ... he may so amend it at any time within 20 days after it is served. Other-

> wise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a) (emphasis added).

Since all proceedings in the instant action were stayed, defendants were prohibited from responding to the complaint as of the date of that order (December 10, 1973). Although the Court has discovered no precedent for this particular situation, it seems to follow from the language of the rule that plaintiffs had 20 days from the date of the stay within which to amend their complaint as a matter of course.

Finally, and perhaps most importantly, the amended complaint itself operates to prohibit an amendment as a matter of course. The amended complaint asserts a new cause of action against individual directors and officers of several of the corporate defendants. (See footnote 2 supra.) These individual defendants were not named in the original complaint and, as plaintiffs have apparently recognized an order pursuant to Rule 21 is necessary before they may be joined as parties defendant. Since Rule 21 governs the procedure for adding parties, a party may not be added by amendment of the complaint as a matter of course. See Moore's Federal Practice ¶ 15.07[02] at 858 (2d ed. 1972). Consequently, plaintiff must now seek leave of the Court to amend the complaint.

After reviewing plaintiffs' "proposed" amendment, the Court finds that the new cause of action arises out of the same

factual context as that alleged in the original complaint and that such new cause of action cannot be characterized as frivolous or unmeritorious. In addition, plaintiffs cannot be said to have unduly delayed the proposal of their amendment. In light of the direction of Rule 15(a) to grant leave to amend freely when justice so requires, the Court grants such leave to plaintiffs. Furthermore, since there is no doubt that the new defendants should have had notice of the institution of the instant action and will not be prejudiced by being joined in the instant action, plaintiffs' Rule 21 motion is granted.

The motion to vacate the stay, however, does not merit such favorable action. Those contentions previously raised by plaintiffs before this Court--i.e., conflict of interest, defendants' lack of a showing of hardship, etc.--have been sufficiently answered on three separate occasions and deserve no further discussion. The Court will, however, finally put to rest the controversy surrounding the withdrawal of counsel in Bernstein from the case of Herbst v. ITT, Civ. 15,155, which is a class action now pending in the United States District Court for the District of Connecticut.

In an effort to resolve the conflicting contentions asserted by counsel to both plaintiffs and defendants, the Court contacted Chief Judge Blumenfeld's chambers directly. The Court was informed that Mr. Bernstein's letter of August 13, 1973 requesting permission to withdraw as counsel to plaintiff in Herbst was trea-

ted as a motion to withdraw. Permission to withdraw was granted inasmuch as all parties consented. Plaintiffs' counsel is correct in his claim that no entry was made upon the docket sheets for the Herbst case. Nonetheless, the Court was assured that the withdrawal was effective as of the date of Mr. Bernstein's letter.

Thus, the only issue now confronting the Court is whether the new cause of action alleged in the amended complaint justifies vacating the previously imposed stay. There is no doubt that the amended complaint sets forth a cause of action not alleged in the Bernstein complaint. Since the stay order was predicated upon the ground that the Bernstein and Blecker actions were virtually identical, it would seem that plaintiffs' position has some merit. Defendants, however, now claim that there is yet a third derivative suit, Boehm v. Bennet, 74 Civ. 1132, now pending in this district court before Judge Conner. They further assert that the cause of action alleged in Bochm is virtually identical to the new cause of action in Blecker.

An examination of the Boehm complaint reveals that defendants' contention is indeed correct. Thus, the Court is presented with a problem similar to that posed by the original motion to stay the instant action: i.e., should the Blecker case continue to be stayed not only in favor of the Bernstein case but, additionally, be stayed in favor of the Boehm case with regard to the new cause of action alleged in the amended complaint? The same consideratio[illegible] which led the Court to stay Blecker in favor of

Bernstein as to the original complaint, when applied to the new cause of action alleged in the amended complaint, require the Court to continue the stay in favor of Boehm.

First, the rights of ITT shareholders will be fully protected. Whatever benefits accrue to plaintiff in Boehm will be enjoyed by all ITT shareholders. In addition, plaintiffs have not asserted that counsel for plaintiff in Boehm is incompetent to successfully prosecute that action. Second, the new cause of action in Blecker is identical to that alleged in Boehm. Third, while it is not possible to forecast whether Boehm would reach an earlier conclusion than Blecker, there is no reason to believe that it would necessarily be resolved after Blecker. Fourth, although the Court is not intimately familiar with the status of Judge Conner's docket, it is familiar with the general status of all dockets in the Southern District of New York. Defendants' speculation that both this Court's and Judge Conner's dockets are overburdened is a more than reasonable assumption. Thus, there is no reason to believe that ITT shareholders would benefit to any great extent by having their claims adjudicated by this Court rather than by Judge Conner. Fifth, and finally, the same factors which led this Court to conclude that defendants, and all ITT shareholders, would suffer a hardship from the maintenance of two similar suits ineluctably leads this Court to now conclude that the maintenance of three separate suits is even more of a hardship. See Blecker v. Lazard Freres & Co., 73 Civ. 4057 (January

18, 1974), Memorandum Opinion at 3.

Accordingly, plaintiffs' motion to add parties defendant and to serve process upon them is granted; plaintiffs' motion to vacate the stay is denied.

So ordered.

Dated: New York, New York
May 2, 1974

CHARLES H. TENNEY
U.S.D.J.

LOUIS BLECKER and RUTH BLECKER,
Plaintiffs,
-against-
LAZARD FRERES & CO., et al.,
Defendants.

73 Civ. 4057 (CHT)

FOOTNOTES

1/ Subsequent to defendants' response to the moving papers, plaintiffs submitted an order to show cause requesting that the stay be vacated; that the instant case be consolidated with both Bernstein v. Mediobanca, 73 Civ. 3549, and Boehm v. Bennett, 74 Civ. 1132; that the Boehm case be transferred to this Court from Judge Conner; and that all other ITT shareholders be stayed from commencing any action based on the transactions alleged in the various complaints. Since the Court has held, infra, that the instant action is to continue to be stayed for all purposes, it will not entertain the order to show cause.

2/ Briefly, the amended complaint is based on the recent revocation by the Internal Revenue Service of its 1969 ruling that disposition of the Hartford stock through the Mediobanca transactions would not result in a tax liability to Hartford shareholders. The new cause of action asserts that the new defendants (certain Directors and officers of ITT) knowingly submitted false and misleading information to the IRS, that consequently their description of the Mediobanca transaction in the Exchange Offer to Hartford shareholders was false and misleading and that they are therefore liable for any losses sustained by ITT as a result of claims by former Hartford shareholders.

NOTICE OF MOTION DATED MAY 27, 1976 FOR AN ORDER PURSUANT TO FED. R. CIV. P. 15(a), (d) GRANTING LEAVE TO FILE AMENDED AND SUPPLEMENTAL COMPLAINT (pp. A19-A20)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

RUTH BLECKER and LOUIS BLECKER,

Plaintiffs,

v.

LAZARD FRERES & CO., et al.,

Defendants.

: 73 Civ. No. 4057 (WCC)

: Rules 15 (a) (d), and 21 Fed.R.Civ.P.

- -x

MOTION TO AMEND AND SUPPLEMENT COMPLAINT AND NAME ADDITIONAL PARTIES DEFENDANT

Plaintiffs Louis and Ruth Blecker move this Court for an order granting them leave to further amend and supplement their complaint and name as additional parties defendant the following present directors of International Telephone & Telegraph Corporation:

Lyman C. Hamilton
Anthony J. A. Bryan
Pomercy Day
William Elfers
Frederic C. Hamilton
Herbert C. Knortz
James V. Lester
Herbert P. Schoen.

The grounds for this motion are that:

a.) The amended complaint does not accurately show the precise factual situation;

b.) Subsequent to the amended complaint plaintiffs learned of additional facts arising out of investigations by agencies of the United States Government into the transactions in suit;

c.) A notice from ITT dated March 26, 1976 advised plaintiffs and all other ITT shareholders of a proposed settlement of Herbst v. ITT, et al., Civ. No. 15,155 District of Connecticut, which directly affects this action; and

d.) Justice so requires in order that all issues between the parties be fully litigated in this action.

These grounds are fully set forth in the annexed second amended complaint, the affidavit of Mathias L. Spiegel and Exhibits, and Memorandum of Law.

This motion will be brought on to be heard before the Hon. William C. Conner, U.S.D.J., on June 7th, 1976, in Room 3006 of the United States Courthouse, Foley Square, New York, New York.

Respectfully submitted,

May 27th, 1976

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Netter & Spiegel
Attorneys for Plaintiffs
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PAUL, WEISS, RIFKIND, WHARTON
& GARRISON
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New York, New York 10022

SECOND AMENDED AND SUPPLEMENTAL COMPLAINT ANNEXED TO MOTION
(pp. A21-A64)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LOUIS BLECKER and RUTH BLECKER, :

Plaintiffs, :

-against- : 73 Civ. 4057 (WCC)

LAZARD FRERES & CO., MEDIOBANCA BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., LAZARD FRERES ET CIE, INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, RICHARD E. BENNETT, EUGENE R. BLACK, RAYMOND L. BRITTENHAM, GEORGE R. BROWN, FRANCIS J. DUNLEAVY, RUSSELL F. ERICKSON, HAROLD S. GENEEN, ARTHUR M. HILL, J. PATRICK LANNAN, R. NEWTON LAUGHLIN, JOHN A. McCONE, RICHARD S. PERKINS, HART PERRY, WARREN LEE PIERSON, FELIX G. ROHATYN, TED B. WESTFALL, ANTHONY J.A. BRYAN, POMEROY DAY, WILLIAM ELFERS, ALVIN E. FRIEDMAN, FREDERIC C. HAMILTON, LYMAN C. HAMILTON, HERBERT C. KNORTZ, JAMES V. LESTER and HERBERT P. SCHOEN, :

Defendants. :

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SECOND AMENDED COMPLAINT

Plaintiffs, by their attorneys, Netter & Spiegel, complaining of the defendants, allege upon information and belief, except as to ¶¶ 2 and 46 which are alleged upon knowledge:

JURISDICTION

1. (a) Jurisdiction of this action is based upon Section 27 of the Securities Exchange Act of 1934 (U.S.C.A. 78(a) et seq.); and Section 22(a) of the Securities Act of 1933 (15 U.S.C.A. 77 v(a)) and to the extent that legal theories of relief based upon state law may be found to be applicable, upon the pendent jurisdiction of this Court;

(b) This action is based upon violations of §10(b) of the Securities Exchange Act of 1934 [15 U.S.C.A. 78 J (b)] and Rule 10 b-5 of the rules promulgated by the Securities and Exchange Commission thereunder (17 C.F.R. 240, 10 (b)-5); §17(a) of the Securities Act of 1933 [15 U.S.C.A. 77 q(a)]; and the common law;

(c) This action is not brought collusively to give the court jurisdiction of an action it would not otherwise have.

2. (a) Plaintiffs are stockholders of INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION ("ITT") and were stockholders at the times of the violations complained of. They presently own 850 shares of the common stock of ITT.

(b) Plaintiffs bring this action derivatively on behalf of ITT.

3. (a) The amount in controversy exceeds $10,000 (exclusive of interest and costs).

(b) The transactions described herein were conducted by means or instruments of interstate commerce and use of mails.

DEFENDANTS

4. ITT is a Delaware corporation with its principal place of business at 320 Park Avenue, New York, New York.

5. LAZARD FRERES & CO. ("Lazard-NY") is a partnership organized and existing under the laws of the State of New York with principal places of business at 44 Wall Street and One Rockefeller Plaza, New York,New York.

6. MEDIOBANCA BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI ("Mediobanca") is a limited company established under the laws of Italy with offices at 10 via Filodrammatici, Milan, Italy.

7. LES FILS DREYFUS ET CIE, S.A. ("Dreyfus") is a corporation established under the laws of Switzerland, with its principal place of business at 14-16 Aeschenvorstadt, Basel, Switzerland.

8. LAZARD FRERES ET CIE ("Lazard-Paris") is a partnership established under the laws of France, its provisions and prefectures, with its principal place of business at 5 rue Pilet-Will, Paris, France. At all times hereinafter mentioned, it was the control person of Lazard-NY.

9. At all times hereinafter mentioned, FELIX G. ROHATYN ("Rohatyn") was an officer and partner of Lazard-NY.

10. (a) The following defendants were directors of ITT during the period between April 1969 and December 31, 1970:

Name	Office
Richard E. Bennett	Executive Vice President & Director
Eugene R. Black	Director
Raymond L. Brittenham	Sr. Vice President-Law and Counsel and Director
George R. Brown	Director
Francis J. Dunleavy	Executive Vice President & Director
Russell F. Erickson	Director
Harold S. Geneen	Chairman, President & Director
Arthur M. Hill	Director
J. Patrick Lannan	Director
Alvin E. Friedman	Director

R. Newton Laughlin	Director
John A. McCone	Director
Richard S. Perkins	Director
Hart Perry	Executive Vice President-Treasurer and Director
Warren Lee Pierson	Director
Felix G. Rohatyn	Director
Ted B. Westfall	Executive Vice President and Director

(b) The following defendants named in ¶ 10(a) are presently directors of ITT:

Richard E. Bennett

Eugene R. Black

Raymond L. Brittenham

Francis J. Dunleavy

Alvin E. Friedman

Harold S. Geneen

J. Patrick Lannan

John A. McCone

Richard S. Perkins

Felix G. Rohatyn

(c) In addition to the defendants named in ¶ 10(b), the following defendants are directors of ITT at the present time:

Name	Office
Antnony J.A. Bryan	Director
Pomeroy Day	Director
William Elfers	Director
Frederic C. Hamilton	Director
Lyman C. Hamilton, Jr.	Executive Vice President and Treasurer and Director
Herbert C. Knortz	Executive Vice President and Comptroller and Director
James V. Lester	Executive Vice President and Director
Herbert P. Schoen	President and Chief Executive Officer, Hartford Fire Insurance Company, an ITT subsidiary, and Director

(d) Harold S. Geneen is at the present time, and was at all times hereinafter mentioned, the Chief Executive Officer of ITT.

BACKGROUND

11. In August of 1968, HAROLD S. GENEEN ("Geneen"), Chairman of the Board and President of ITT, approached the Hartford Fire Insurance Company ("Hartford") to discuss the acquisition of Hartford by ITT.

12. On or about November 19, 1968, ITT purchased through Lazard-NY, one of its investment bankers, and Middendorf Colgate & Co., a member of the New York Stock Exchange,

1,282,948 shares of Hartford common stock. ITT continued to purchase Hartford common on national securities exchanges until on or about March 13, 1969 at which time it owned 1,741,348 shares of Hartford common ("Shares") at an average cost of approximately $51 per share.

13. On December 23, 1968, ITT submitted to Hartford a written proposal for a combination of the companies.

14. On April 15, 1969, Hartford submitted to the Internal Revenue Service ("IRS") a request for a ruling that a proposed merger between it and ITT ("Merger") would be non-taxable to its shareholders.

15. In connection with the request by Hartford to the IRS for a ruling on the Merger, Davis Polk & Wardwell, counsel for ITT, advised ITT that it would have to unconditionally dispose of the Shares, and the IRS was informed that ITT would unconditionally dispose of the Shares by sale to third parties.

16. In the late spring and summer of 1969, ITT began to explore ways of disposing of the Shares, which were then trading substantially below their purchase price. Believing that over the long term whether or not the merger occurred, the Shares would sell at prices in excess of their

purchase price, ITT sought a buyer who would purchase the Shares at a price based on their future value. In connection therewith, ITT enlisted the aid of Rohatyn.

17. Rohatyn discussed possible purchasers for the Shares with Andre Meyer, a partner in Lazard-NY and Lazard-Paris. As a result of these discussions, Rohatyn informed ITT that a foreign bank, such as defendant Mediobanca, might be a possible purchaser.

18. On or about August 18, 1969, Rohatyn communicated to Meyer an outline of an agreement whereby Mediobanca would purchase the Shares from ITT.

19. On August 28, 1969, ITT and Mediobanca met in Paris, France. Present at that meeting were Meyer, Dr. Enrico Cuccia, Managing Director of Mediobanca, and Messrs. Richard G. Bateson, Robert Kagan and DeForest Billyou, representing ITT.

20. On August 30, 1969, Messrs. Cuccia, Bateson, Kagan and Billyou met again in Milan, Italy.

21. At the meetings of August 28 and 30, 1969, a proposed contract for sale of the Shares to Mediobanca was discussed.

22. In September of 1969, representatives of ITT and Lazard-NY met in New York and discussed a proposed contract for the sale of the Shares of Mediobanca.

23. In late September or early October 1969, Thomas F.X. Mullarkey of Lazard-NY met with Dr. Cuccia in Milan to discuss a proposed contract for the sale of the Shares to Mediobanca.

24. On October 13, 1969, the IRS responded to Hartford's request and issued a ruling that a merger between it and ITT would be a non-taxable event to the parties and their shareholders if ITT disposed of the Shares prior to the approval of a merger proposal by the Hartford shareholders.

25. On October 14, 1969, ITT requested a supplemental ruling from the IRS that a sale of the Shares to Mediobanca would constitute an unconditional sale as required by the IRS in its ruling of October 13, 1969. Submitted with the request for a supplemental ruling was a proposed contract of sale of the Shares to Mediobanca, dated October 7, 1969 ("Request").

26. On October 21, 1969, the IRS issued the Supplemental Ruling as requested by ITT ("Ruling")

27. On November 3, 1969, Mediobanca, on behalf of a

syndicate ("Syndicate"), entered into a contract with ITT ("Contract") for the sale of the Shares which was substantially identical with the proposed contract submitted to the IRS. The contract provided, inter alia, that its provisions were applicable to the Shares or any other securities received in exchange therefor in any merger or reorganization, and that the sale or transfer of any of the Shares was subject to the approval of Lazard-NY.

28. As a condition to entering into the Contract, ITT was required to pay, and on October 29, 1969 did pay to Lazard-NY for the account of Mediobanca $1,332,131.22.

29. In a letter dated November 6, 1969, ITT indemnified and held Lazard-NY and any of its partners harmless against any liability that might arise under the contract.

30. On November 9, 1969, the closing under the contract was held at Dreyfus' offices in Basel. At the closing, ITT delivered the Shares endorsed in blank to Lazard-NY.

31. On December 19, 1969, the Insurance Commissioner of the State of Connecticut rejected the proposed merger of ITT and Hartford. On December 26, 1969, ITT filed with the Insurance Commissioner an offer to exchange ITT Cumulative

Preferred stock, $2.25, Convertible Series N ("N") for the outstanding stock of Hartford. In May of 1970 the offer was approved by the Insurance Commissioner.

32. ITT made such an exchange offer dated May 26, 1970 ("Exchange Offer") and thereafter acquired more than 90% of the outstanding stock of Hartford including the Shares on a share for share basis.

33. In June of 1970, "N" began to trade on the New York Stock Exchange. Between June of 1970 and May 28, 1971, 1,300,000 of the Shares were sold at prices substantially below the market price of "N" on the date of each sale.

THE CONSPIRACY

34. Commencing as early as April of 1969 and continuing until the present, the defendants, or at varying times some of them, conspired to enter into a plan and scheme to defraud ITT and its shareholders, in violation of §10-(b) of the Securities Exchange Act of 1934 and Rule 10-(b)-5 promulgated thereunder, §17(a) of the Securities Act of 1933, and their fiduciary duties, such plan and scheme having developed as a result of the knowledge of the defendants that ITT would

have to divest itself of its holdings of the Shares. The plan and scheme were fraudulently concealed.

35. In the course of the plan and scheme, the defendants caused ITT and others to:

(a) Submit to the IRS untrue statements of material facts, or omit and conceal material facts necessary to make the statements submitted to the IRS not misleading, in connection with the contract for the proposed sale of the Shares to Mediobanca.

(b) Enter into the Contract, as a condition to which and in the course of which it paid to Mediobanca and/or Lazard-NY substantial sums, the use of which, in addition to the use of cash dividends paid on the Shares, it had to forego.

(c) Submit to the Securities and Exchange Commission and publish untrue statements, or omit and conceal facts necessary to make the statements submitted to the SEC and published, not misleading, in connection with the Exchange Offer.

(d) Acquiesce in and approve of sales of 1,300,000 of the Shares owned by it either directly or beneficially, at prices substantially below the market for "N" at the time of each sale.

(e) Submit to this Court untrue statements or omit and conceal from this Court and the District Court in Connecticut facts necessary to make statements submitted not misleading in order to avoid any judicial inquiry into the plan and scheme.

(f) Enter into the Stipulation of Settlement referred to in ¶¶ 56-57 infra.

FRAUDULENT CONCEALMENT OF THE PLAN AND SCHEME

36. In 1963, Mediobanca and Lazard-NY entered into an oral agreement ("Agreement") which provided that any commissions or profits resulting from transactions between Mediobanca and United States persons were to be divided equally between them.

37. In August or September of 1969, Rohatyn told Geneen of the Agreement.

38. The Agreement was concealed by ITT in its request to the IRS for a supplemental ruling dated October 14, 1969.

39. As a result of the acts of ITT, the IRS was fraudulently induced to issue its ruling of October 21, 1969.

40. The Agreement was confirmed with respect to the sale of the Shares in a Letter Agreement from Mediobanca to Lazard-NY dated November 3, 1969 ("Letter Agreement").

41. The Letter Agreement provided, inter alia, that:

(a) Lazard-NY would open two accounts in Mediobanca's name entitled "Mediobanca-H.F.I.Co. Account No. 1" ("Account No. 1"), and "Mediobanca H.F.I.Co. Account No. 2" ("Account No. 2");

(b) Lazard-NY was to sell the Shares in such amounts and at such times as it deemed advisable.

42. Davis Polk & Wardwell, counsel for ITT at the time of the Exchange Offer, was unaware of the existence of the Letter Agreement until some time after May 26, 1970.

43. As a result of the concealment of the Agreement and the Letter Agreement, counsel for ITT and Hartford were fraudulently induced to render their opinions contained in the Exchange Offer that the Merger would have no tax consequences to the Hartford shareholders.

44. As a result of the acts alleged in ¶¶ 36 through 42, plaintiffs could not have become aware of the plan and scheme until some time after May of 1973 when the Letter Agreement was produced in the course of the deposition of D. Nelson Adams, a partner of Davis Polk & Wardwell, in Herbst v. ITT, Civ. No. 15,155, United States District Court, District of Connecticut ("Herbst"), a class action brought on behalf of former Hartford shareholders who participated in the Exchange Offer.

45. The deposition of D. Nelson Adams was taken by Lawson F. Bernstein as Pre-Trial Counsel in Herbst on May 3, 1973.

46. On June 18, 1973, a motion was filed in Herbst and granted by the Court on June 26, 1973, permitting Lawson F.

Bernstein to represent the plaintiff in all proceedings in Herbst, together with James O'Connor Shea and Silverman & Harnes.

47. On June 18, 1973, Lawson F. Bernstein delivered to ITT a letter ("Demand") in which he stated that he had been retained by a shareholder of ITT to commence a derivative action on its behalf. Annexed to the letter was a copy of the complaint subsequently filed in Bernstein v. Mediobanca, 73 Civ. 3549 (WCC) ("Bernstein") which alleged that ITT had been defrauded by Lazard-NY, Mediobanca, Lazard-Paris and Dreyfus with respect to the sale of the Shares.

48. On August 15, 1973, Lawson F. Bernstein filed in the Southern District of New York, derivatively on behalf of ITT, a complaint virtually identical to that annexed to the Demand. The complaint in Bernstein neither names the directors of ITT as parties defendant nor alleges wrongdoing on their part.

49. On the same day that the complaint in Bernstein was filed in the Southern District of New York, Lawson F. Bernstein wrote to the District Court in Connecticut with copies to all counsel, that he was withdrawing as "Pre-Trial Counsel" in Herbst ("Withdrawal"). The Withdrawal was acquiesced in by all parties in Herbst.

50. The Directors and Management of ITT acquiesced in the

Withdrawal in order to conceal the plan and scheme alleged herein. Thereto all counsel in Herbst acted in concert with the Directors and Management of ITT.

51. On September 21, 1973, the complaint in this action was filed in the Southern District of New York alleging, inter alia, that members of the ITT Board of Directors might have participated in the acts complained of and that all of the ITT Directors ultimately might be named as parties defendant.

52. On November 16, 1973, prior to answer and without supporting affidavits, ITT moved to stay this action during the pendency of Bernstein, on the ground that the actions were virtually identical ("Stay").

53. On November 28, 1973, Lawson F. Bernstein wrote to the Hon. Charles H. Tenney, United States District Judge for the Southern District of New York charging that the complaint in this action plagiarized the complaint in Bernstein. In an opinion dated December 11, 1973, Judge Tenney granted the Stay.

Plaintiffs moved for reargument, contending that a conflict existed between Bernstein and Herbst. ITT responded that Lawson F. Bernstein had withdrawn from Herbst. Plaintiffs in Blecker challenged the Withdrawal.

Judge Tenney then requested an affidavit from Lawson F. Bernstein. In his affidavit dated January 16, 1974, Lawson F. Bernstein stated:

> "I withdrew as pre-trial counsel to plaintiff's attorney in the Herbst action effective August 13, 1973."

That statement was false and misleading. In reliance thereon Judge Tenney denied plaintiffs' motion for reargument.

54. On March 11, 1974, an amended complaint was filed in this action and a motion made to name the Directors of ITT as parties defendant, which motion was granted by Judge Tenney on May 3, 1974. In reliance upon false and misleading statements made to this Court and the Court for the District of Connecticut Judge Tenney again denied plaintiffs' motion to vacate the Stay.

55. The Directors and Management of ITT authorized Counsel to seek to Stay this action in order to conceal the plan and scheme alleged herein. Thereto Lawson F. Bernstein and Counsel for ITT acted in concert with the Directors and Management of ITT.

56. On March 11, 1976, a Stipulation of Settlement ("Stipulation of Settlement") was entered into in Herbst: (a) for the plaintiffs, by Sidney B. Silverman, Silverman & Harnes; (b) for ITT, by John H. Schafer, Covington and Burling; (c) for ITT management directors Raymond L. Brittenham, Francis J. Dunleavy, Russell F. Erickson, Harold S. Geneen, R. Newton Laughlin, Hart

Perry and Ted B. Westfall, by S. Hazard Gillespie, Davis Polk & Wardwell; (d) for outside directors Eugene R. Black, George R. Brown, Alvin E. Friedman, J. Patrick Lannan, John A. McCone, Warren Lee Pierson, by Samuel E. Gates, Debevoise, Plimpton, Lyons & Gates; and (e) for Lazard-NY and Felix G. Rohatyn, by Simon H. Rifkind, Paul, Weiss, Rifkind, Wharton & Garrison.

57. The Stipulation of Settlement states, inter alia, that ITT intends to execute and deliver releases to its Directors and that the Directors intend to utilize the releases to move for dismissal of certain of the claims that comprise the plan and scheme alleged herein. Plaintiffs have filed objections to the Stipulation of Settlement.

58. The Directors and Management of ITT have consented to the Stipulation of Settlement in order to avoid any judicial inquiry into the plan and scheme alleged herein. Lawson F. Bernstein and Counsel named in ¶ 56 continue to act in concert with the Directors and Management of ITT.

SUPPLEMENTAL IRS RULING

59. In the Request, ITT represented to the IRS with respect to the proposed Mediobanca contract, among other things, that:

(a) Mediobanca was an independent third party;

(b) It was an unconditional sale and transfer of all of ITT's right, title and interest in the Shares;

(c) Lazard-NY was an independent investment banker;

(d) It obligated Mediobanca to unconditionally pay to ITT a purchase price determined by one of the following three pricing alternatives, as chosen by Mediobanca:

i. $51 per share or market price on the closing date, if higher;

ii. An amount equal to the average fair market value of the Shares as determined by independent investment bankers for the two-week period ending May 31, 1971, plus the net amount of dividends paid or declared of record date thereon from the closing date to June 10, 1971; or

iii. An amount equal to the proceeds received by Mediobanca from the sale of the Shares or their equivalence to third parties in an arms length transaction, plus the amount of any dividends paid or declared of record date prior to the date of sale, less the amount of any agreed upon fees.

60. ITT represented further in the Request that after the sale of the Shares to Mediobanca it would:

(a) Have unconditionally divested itself of all legal and equitable interest in the Shares;

(b) Have no right or obligation, direct or indirect, with respect to the Shares;

(c) Have completely and unconditionally extinguished after delivery on the closing date its rights of ownership in the Shares;

(d) Retain no right to approve or determine the price to be received by Mediobanca on a future sale of the Shares.

61. The Request was false and misleading in that ITT knew that:

(a) Mediobanca never intended to assume any risk of ownership with respect to the Shares;

(b) The first pricing option contained in the Contract was never intended to apply;

(c) Mediobanca was not an independent third party, but a partner with Lazard-NY, ITT's investment banker, in all profits realized by Mediobanca from the disposal of the Shares;

(d) It had not unconditionally divested itself of all legal and equitable interest in the Shares but had retained rights, either directly or indirectly through Lazard-NY, to approve the sale of and the sale price for the Shares;

(e) Lazard-NY was not an independent investment banker with respect to the Mediobanca transaction.

62. Geneen, Rohatyn, Mediobanca, Lazard-NY, Lazard-Paris and Dreyfus knew that:

(a) Mediobanca was a party with Lazard-NY to the Agreement (¶ 36).

(b) Dreyfus was a member of the Syndicate.

The other defendants, if they did not have such knowledge, in the reasonable exercise of prudence and diligence should have learned of such facts.

63. Rohatyn, Mediobanca, Lazard-NY, Lazard-Paris and Dreyfus knew of the Letter Agreement. The other defendants, if they did not have such knowledge, in the reasonable exercise of prudence and diligence should have learned of the Letter Agreement (¶ 40).

64. Geneen, Rohatyn, Mediobanca, Lazard-NY, Lazard-Paris and Dreyfus knew of the matters set forth in ¶ 61 and knew or should have known that they would not be disclosed to the IRS in ITT's Request. They also knew or should have known that if the facts and circumstances surrounding the Mediobanca transaction became known, significant doubt would be cast on the representations made to the IRS by ITT in support of the Request. The other defendants, if they did not have knowledge of the aforesaid, in the reasonable exercise of prudence and diligence should have learned of such facts and circumstances.

65. Mediobanca, Lazard-NY, Lazard-Paris and Dreyfus acted willfully with ITT, as aiders and abettors in fraudulently obtaining the Ruling from the IRS.

66. On January 24, 1974, plaintiff in Herbst filed a motion to amend and supplement her complaint by adding Lazard-NY as a party defendant and by seeking recovery from ITT, its directors and Lazard-NY of any taxes assessed by

the IRS in the event of the revocation of the Ruling.

67. On March 6, 1974, the IRS retroactively revoked the Ruling ("IRS Action") on the ground that the Mediobanca transaction was not consummated in accordance with the representations made by ITT in the Request.

68. On March 11, 1974, an amended complaint was filed in this action and this Court then allowed plaintiffs to name as defendants the ITT directors at the time of the Exchange Offer.

69. (a) On March 11 and April 4, 1974, ITT informed the Hartford shareholders who had participated in the Exchange Offer that it would reimburse them for any net tax they might incur as a result of the IRS Action.

(b) The Stipulation of Settlement (¶56) provides that the settlement, its expenses of processing and counsel fees are to be paid by ITT in its common stock, and election of the aforesaid shall preclude a class member so electing from receiving compensation pursuant to ¶ 69(a).

70. Any losses incurred by ITT as a result of reimbursement of Hartford shareholders for any tax incurred by them, arose from the acts of the defendants alleged herein in violation of the securities laws and in breach of their common law fiduciary duties.

71. Any fees and expenses incurred by ITT, in the investigations by governmental agencies into the circumstances surrounding the Request and Ruling and in lawsuits brought on its behalf or brought by it or against it as a result of the IRS Action, arose from the acts of the defendants in violation of the securities laws and in breach of their common law fiduciary duties.

72. ITT has sustained damages as a result of the IRS Action in an amount presently unascertainable but at least in excess of $30,000,000.

THE EXCHANGE OFFER

73. In the Exchange Offer, ITT represented that opinions of counsel had been received as follows:

> "Provided that (a) ITT acquires through the Exchange Offer at least 80% of the outstanding Hartford Common Stock, and (b) ITT acquires no Hartford Common Stock except in exchange for shares of ITT voting stock, it is the opinion of Davis Polk & Wardwell, counsel to ITT, and Skadden, Arps, Slate, Meagher & Flom, special counsel to Hartford that (i) the exchange by Hartford shareholders of their shares of Hartford Common Stock for shares of ITT Series N Stock will not result in the recognition of any gain or loss to Hartford shareholders making the exchange; (ii) no gain or loss will be recognized by ITT or Hartford by reason of the exchange; (iii) the basis for the shares of ITT Series N Stock received by the Hartford shareholders will be the same as the basis of the shares of Hartford Common Stock surrendered in exchange therefor; (iv) the holding period of the ITT Series N Stock received by a Hartford shareholder will include the holding period of the Hartford Common Stock surrendered in exchange therefor,

provided that the Hartford Common Stock is a capital asset in the hands of the shareholder on the date of the exchange; and (v) the ITT Series N Stock to be received in exchange for the Hartford Common Stock will not constitute 'Section 306 stock' within the meaning of the Internal Revenue Code of 1954, as amended."

74. ITT represented further in the Exchange Offer that a ruling had been received from the IRS that the ITT Mediobanca transaction complied with the IRS ruling of October 14, 1969, as follows:

"On November 3, 1969, ITT entered into a Contract of Sale ("Contract") with Mediobanca, S.p.A. ("Bank"), an Italian corporation, for the sale of 1,741,348 shares of Hartford Common Stock ("Hartford Shares") held by ITT, pursuant to a ruling of the Internal Revenue Service, dated October 13, 1969, requiring that prior to the date on which the shareholders of Hartford voted on a proposed merger, ITT unconditionally dispose of all of the Hartford Shares which it held by sale to third parties. This Contract was entered into following the receipt of a ruling of the Internal Revenue Service concluding that the sale by ITT of the Hartford Shares pursuant to the terms of such Contract would comply with the earlier ruling of that Service. The sale of such shares was consummated, against payment of $51 per share (effected by the Bank crediting ITT on the Bank's books in a U.S. Dollar account), which amount is subject to possible adjustment upon final determination of the per share purchase price in accordance with provisions of the Contract. Such provisions include adjustments (i) based on net sale proceeds received by the Bank in an arms-length sale by it of the Hartford Shares (including any securities received in exchange therefor in any merger or reorganization) and (ii) in the absence of any such arms-length sale, or at the election of the Bank, based on the average fair market value of the Hartford Shares during a two-week period in May 1971. Pending such final determination of the purchase price and in order to secure such possible

adjustments in the $51 per share amount, ITT is obligated to maintain the account with the Bank and not to make withdrawals therefrom except as provided in the Contract."

75. In reliance on the representations set forth in ¶¶ 73 and 74, the stockholders of both ITT and Hartford had reason to believe that the Exchange Offer met the requirements of the Internal Revenue Code of 1954, as amended, for a tax-free exchange and that rulings had been received from the IRS confirming that the Exchange Offer as proposed would so constitute a tax-free exchange. The exchange was made on that basis.

76. The representations made in the Exchange Offer were made by ITT with the knowledge and consent of its directors named as defendants herein in ¶ 10(a).

77. Geneen and Rohatyn had knowledge of the matters set forth in ¶ 61 which cast significant doubt upon the representations set forth in ¶¶ 59 and 60. These matters relate to the conspiracy alleged herein and bear upon whether ITT had in fact unconditionally disposed of the Shares and thus whether the exchange was a "non-cash" transaction as defined in the Internal Revenue Code. The other directors of ITT, if they did not have knowledge of the aforesaid matters, in the reasonable exercise of prudence and diligence should have

learned of them.

78. Mediobanca, Lazard-NY, Lazard-Paris and Dreyfus knew or should have known that the matters set forth in ¶ 61 would not be disclosed in the Exchange Offer. Their participation with ITT in the Mediobanca transaction was wilfull and aided and abetted the publication of the representations set forth in ¶¶ 73 and 74 upon which the shareholders of ITT and Hartford relied to their detriment.

79. Any losses incurred by ITT, as a result of reimbursement of Hartford shareholders for any tax incurred by them by reason of their reliance upon the Exchange Offer, arose from the acts of the defendants alleged herein in violation of the securities laws and in breach of their common law fiduciary duties.

80. Any fees and expenses incurred by ITT, in the investigations by governmental agencies into the circumstances surrounding the Exchange Offer and in lawsuits brought on its behalf or brought by it or against it as a result of the Exchange Offer, arose from the acts of the defendants in violation of the securities laws and in breach of their common law fiduciary duties.

81. ITT has sustained damages as a result of the representations contained in the Exchange Offer in an amount

presently unascertainable, but at least in excess of $30,000,000.

SALE OF THE SHARES

82. In the fall of 1970, Mediobanca began to negotiate to sell the Shares that the Contract provided were to be sold in arms-length transactions. Mediobanca initially negotiated to sell 800,000 of the Shares to the Dreyfus Fund ("Fund"), a mutual fund related to the Dreyfus Corporation, a large mutual fund and pension fund manager. Mediobanca consulted with Lazard-NY as to the appropriate price for the sale of the Shares to the Fund. On November 9, 1970, Lazard-NY approved a price of $49 per share for the said sale.

83. The sale, however, was not made through Lazard-NY as required in the Contract and on November 12, 1970, Mediobanca advised ITT by telex that it had negotiated the sale of 800,000 of the Shares at $49 per share and elected to have the purchase price determined under §5 of the Contract. Mediobanca requested that ITT confirm that the sale and price were in conformity with the Contract.

84. On November 12, 1970, ITT telexed to Mediobanca confirming that the price for 800,000 of the Shares and the sale to Fund were in conformity with the Contract. That day, Mediobanca directly sold 800,000 of the Shares to the Fund at $49 per share.

85. On November 12, 1970, the approximate market price of "N" on the New York Stock Exchange was $55 per share.

86. On November 17, 1970, Mediobanca telexed to ITT notice of the sale to the Fund in conformity with the Contract.

87. Within the month following the sale to the Fund, Mediobanca requested instructions from Lazard-NY as to the sale price for future sales of the Shares. Lazard-NY replied that any sale by Mediobanca of 100,000 or more of the Shares should be at a price not below $55 per share.

88. In December of 1970, Mediobanca advised ITT that it had prospective purchasers for 100,000 and 400,000 of the Shares at a price of $55, and requested confirmation that the sales and price would be in conformity with the Contract.

89. On December 11 and 12, 1970, ITT replied, confirming that sale of and the price for the blocks of 100,000 and 400,000 of the Shares, respectively, would be in conformity with the Contract.

90. In December 1970, Mediobanca, on behalf of the Syndicate, entered into two agreements to sell the Shares:

(a) An agreement, dated December 15, 1970, with Dreyfus, granting it an option to May 1, 1971 to pur-

chase 100,000 of the Shares at a price of $55 per share. The agreement did not obligate Dreyfus to make the purchase.

(b) An agreement, dated December 15, 1970, with International Investment Associates ("I.I.A.") under which I.I.A. was granted an option to May 1, 1971 to purchase 400,000 of the Shares at a price of $55 per share. The agreement did not obligate I.I.A. to purchase such shares.

91. Neither I.I.A. nor Dreyfus made any payment to ITT for the options granted to them.

92. When the I.I.A. and Dreyfus agreements were entered into, the market price of "N" on the New York Stock Exchange was approximately $70 per share.

93. On January 28, 1971, Lazard sold on the New York Stock Exchange a block of 399,300 of the Shares at $68.50 and an additional 700 at $69.25. Notice to have §5 of the Contract apply to these sales was sent from Lazard-NY to ITT.

94. On March 29, 1971, Mediobanca telexed to ITT that it intended to consummate the sale of 100,000 of the Shares to Dreyfus and elected to have the purchase price determined under §5 of the Contract. Mediobanca requested that ITT confirm that the sale and price were in conformity with the Contract.

95. On March 29, 1971, ITT telexed to Mediobanca that the price for 100,000 of the Shares and sale to Dreyfus were in conformity with the Contract. Mediobanca that day sold 100,000 of the Shares to Dreyfus at $55 per share.

96. On March 29, 1971, "N" closed on the New York Stock Exchange at approximately $76 per share.

97. On March 31, 1971, Mediobanca sent ITT written notice of the sale to Dreyfus in conformity with the Contract.

98. In a letter dated April 27, 1971, Mediobanca confirmed to ITT that it had agreed with I.I.A. to extend from May 1, 1971 to May 25, 1971 the period of time during which I.I.A. would have the right to purchase 400,000 of the Shares at $55 per share. ITT received no compensation for this extension.

99. Between May 4 and 11, 1971, Lazard-NY sold the remaining 41,348 of the Shares on the New York Stock Exchange.

100. On May 26, 1971, Mediobanca telexed to ITT that it intended to consummate the sale of 400,000 of the Shares to I.I.A., and elected to have the purchase price determined under §5 of the Contract. Mediobanca requested that ITT confirm that the sale and price were in conformity with the Contract.

101. ITT responded on May 26, 1971, confirming that if the I.I.A. transaction was effected on the terms and conditions set forth in Mediobanca's telex of that day and notice given to it as required in the Contract, the price for 400,000 of the Shares to be sold to I.I.A. would be determined to be $55 per share under §5 of the Contract. Mediobanca that day sold 400,000 of the Shares to I.I.A. at $55 per share.

102. On May 26, 1971, "N" traded on the New York Stock Exchange at approximately $80 per share.

103. On May 28, 1971, Mediobanca sent ITT written notice of the sale to I.I.A.

104. The sales to Fund, Dreyfus and I.I.A. were not arms-length transactions in conformity with the Contract.

105. At the times Mediobanca entered into the transactions with Fund, Dreyfus and I.I.A.:

(a) Andre Mayer and Pierre David-Weill, partners in Lazard-Paris, were also partners in Lazard-NY.

(b) Jean Guyot, the President of I.I.A. was a partner in Lazard-Paris, a director of Le Material Telephonique, approximately 68% of whose stock was owned by International Standard Electric Corporation, a wholly-owned ITT subsidiary. Guyot was also or would soon become a director of Mediobanca.

(c) Michel David-Weill, a son of Pierre David-Weill, was a partner in Lazard-Paris and a member of the board of directors of I.I.A.

(d) Mediobanca and Dreyfus comprised the Syndicate.

(e) Lazard-NY was Mediobanca's partner in all fees and profits realized by Mediobanca from the Contract.

106. Lazard-NY credited Account No. 1 initially with the commitment fee referred to in ¶ 28. As each cash dividend on the Shares was paid, Lazard-NY credited it to Account No. 1.

107. Following each sale of the Shares, Lazard-NY credited Account No. 1 with the net proceeds of such sale and debited Account No. 1 with the amount of each such purchase price as determined under §5 of the Contract.

108. After each transaction referred to in ¶107, the net credit balance remaining in Account No. 1 was transferred to Account No. 2.

109. Following the last sale of the Shares, the credit balance contained in Account No. 2--approximately $1,750,000, was divided by Lazard-NY and Mediobanca.

110. Thereafter, Mediobanca requested that ITT pay to Lazard-NY $155,000 for additional selling expenses related to the sale of the Shares. On June 25, 1971, ITT did pay such an amount to Lazard-NY.

111. On July 7, 1971, Lazard-NY transmitted to ITT another request from Mediobanca for the payment of an additional $204,000 for selling expenses related to the sale of the Shares. On July 27, 1971, ITT did pay such an amount to Lazard-NY.

112. All of the moneys referred to in ¶¶ 109-111 were divided 50% to Lazard-NY, 45% to Mediobanca and 5% to Dreyfus.

113. In approving the sales of the Shares to Fund, I.I.A. and Dreyfus, ITT acted in concert with the other defendants.

114. Geneen and Rohatyn knew or should have known that the sales of the Shares to Fund, I.I.A. and Dreyfus at prices substantially below the market price of "N" on the day of each sale were not in conformity with the Contract and could only cause a diminution of the amounts rightfully due ITT from such sales. The other directors of ITT, if they did not have knowledge of the circumstances of the aforesaid sales, in the reasonable exercise of prudence and diligence should have learned of them.

115. Lazard-NY, Lazard-Paris, Dreyfus and Mediobanca knew or should have known that the sales of the Shares to

Fund, I.I.A. and Dreyfus at prices substantially below their market price on the day of each sale were not in conformity with the Contract and could only cause a diminution of the amounts rightfully due ITT from such sales.

116. Any losses incurred by ITT as a result of the sales of the Shares alleged herein at prices substantially below the market price at the time of each such sale, arose from the acts of the defendants, other than Anthony J.A. Bryan, Frederic C. Hamilton and Lyman C. Hamilton, Jr., in violation of the securities laws, and in breach of their common law fiduciary duties.

117. ITT has sustained losses as a result of the sales of the Shares at prices substantially below the market price at the time of each such sale in an amount presently unascertainable but at least in excess of $16,000,000.

CONFLICTS OF INTEREST

118. On June 16, 1972, the Securities and Exchange Commission brought a Complaint for Injunction against ITT, Mediobanca, Lazard-NY, Howard S. Aibel and John S. Navin, 72 Civ. 2561, S.D.N.Y. ("Complaint for Injunction"). On July 6, 1972, Herbst was commenced naming as defendants ITT and its directors named in the amended complaint herein.

119. The complaint in Herbst alleged that the representations made in the Exchange Offer (¶¶ 73-74) were false and misleading and, if full disclosure had been made in the Exchange Offer, members of the class would have received additional compensation in connection with the exchange. The Complaint thereafter was amended (¶ 66).

120. The claims of the class in Herbst arose out of the plan and scheme alleged herein.

121. At least as early as June 11, 1973, all counsel in Herbst and Lawson F. Bernstein knew of the participation of the Directors and Management of ITT in the plan and scheme alleged herein.

122. The acts alleged in ¶¶ 46-48 created a conflict of interest between Lawson F. Bernstein's obligations in Herbst and the obligations to the shareholders of ITT that he assumed in June of 1973 by reason of his representation of plaintiff in Bernstein.

123. At the times of the acts alleged in ¶¶ 46-48, Lawson F. Bernstein knew that his representation of the plaintiff in Bernstein was in conflict with his obligations in Herbst.

124. With knowledge that the Directors and Management of ITT had participated in the plan and scheme alleged herein,

Lawson F. Bernstein sought to avoid having the defendants in Herbst assert the conflict of interest alleged in ¶ 122 by advising plaintiff in Bernstein not to sue the Directors and Management of ITT.

125. Plaintiff in Bernstein, to the detriment of ITT and its shareholders, agreed not to sue the Directors and Management of ITT.

126. As a result of his agreement not to sue the Directors and Management of ITT for the wrongs alleged herein, plaintiff in Bernstein was and is unable to fairly and adequately represent the shareholders of ITT.

127. At least as early as June 18, 1973, the Directors and Management of ITT knew or should have known of the conflict of interest between Lawson F. Bernstein's obligations in Herbst and the obligations to the shareholders of ITT that Lawson F. Bernstein assumed in June of 1973 by reason of his representation of plaintiff in Bernstein.

128. Commencing in July and continuing through November of 1973, the Board of Directors of ITT ("Board") met and discussed the Demand (¶ 47) and the complaint in Bernstein. At the meetings of the Board in September, October and November of 1973, the complaints in Bernstein and this action were discussed.

129. At one or more of the meetings referred to in ¶ 128, Samuel E. Gates of Debevoise, Plimpton, Lyons & Gates, S. Hazard Gillespie of Davis Polk & Wardwell, and John H. Schafer of Covington and Burling, joined with the Board and rendered advice to it with respect to the Demand (¶ 47), the Withdrawal (¶ 49) and the Stay (¶ 52).

130. The decision of the Board to Stay this action was not based on valid legal consideration relating to the interests of ITT and its shareholders but upon considerations as to which the Directors and Management of ITT acted and continued to act out of a conflict of interest.

131. The representation by Covington and Burling of ITT in Herbst was and continues to be in conflict with their representation of ITT in this action and other derivative actions alleging claims arising out of the plan and scheme alleged herein.

132. The representation in Herbst of the ITT directors by Davis Polk & Wardwell and Debevoise, Plimpton, Lyons & Gates was and continues to be in conflict with their representation of the ITT directors in Boehm v. Bennett, et al., 74 Civ. 1132 (WCC) U.S. District Court SDNY ("Boehm"), and would be in conflict with their representation of the ITT directors in

this action.

133. The representation in Herbst of Lazard-NY and Felix G. Rohatyn by Paul, Weiss, Rifkind, Wharton & Garrison was and continues to be in conflict with their representation of Felix G. Rohatyn in Boehm, and would be in conflict with their representation of Felix G. Rohatyn in this action.

134. The conflicts of interest set forth in ¶¶ 122, 131, 132 and 133 manifest themselves in the Stipulation of Settlement (¶¶ 56-57) and the Notice of Hearing dated March 26, 1976 mailed by ITT to its shareholders.

135. The decision by ITT's present management to execute the Stipulation of Settlement releasing and discharging the ITT directors named as defendants herein is not based on legal considerations relating to the interests of ITT and its shareholders but upon considerations as to which the defendants named in ¶ 10 acted and continue to act out of conflict of interest.

136. A majority of the present directors of ITT acquiesced or participated in the plan and scheme alleged herein. Of the balance of the present directors, three are officers of ITT, at least two of whom participated on behalf of ITT in the Mediobanca Transaction, one was a member of Hartford's former management and is Hartford's President, and two others represent former Hartford

interests which may directly or indirectly be members of the class in Herbst.

137. The Stipulation of Settlement provides that all damages and costs are to be borne by ITT and its shareholders while discharging and releasing the past and present directors of ITT from any claims arising out of the matters in suit in this action.

138. The Stipulation recites further that all of the parties in Herbst understand that the present and past directors of ITT intend to utilize the releases to obtain a dismissal of ¶¶ 48-52 of the Amended Complaint in this action, Boehm, and other derivative actions asserting claims arising out of the plan and scheme alleged herein.

139. The releases described in the Stipulation of Settlement and the purposes of their use set forth therein are contrary to public policy as well as the policies set forth in the Securities Laws of the United States under which the jurisdiction of this Court is invoked.

140. The present Directors and Management of ITT have agreed to the settlement of the claims in Herbst, irrespective of the circumstances of the plan and scheme alleged herein for reasons not related to the interests of ITT but for other

reasons including:

(a) A majority of the present Board of ITT were directors of ITT at the time of the acts alleged herein.

(b) Geneen and Rohatyn were the architects of the plan and scheme alleged herein.

(c) The present Board of ITT seeks to avoid any judicial inquiry into the matters alleged herein.

141. By reason of their conflict and possible exposure to liability in respect of the plan and scheme alleged herein, the present Directors and Management of ITT are not in a position to exercise independent business judgment with respect to the disposition of the claims alleged herein. At the present time, ITT lacks independent management capable of defending or disposing of such claims.

142. (a) Since the commencement of this action, a majority of the present Directors and Management of ITT, and all counsel in Herbst have been aware or should have been aware that the claims in this action are based on a plan and scheme to defraud ITT and its shareholders materially different from the fraud alleged in Bernstein.

(b) The efforts of the Directors and Management of ITT and Lawson F. Bernstein to preclude judicial inquiry into the plan and scheme alleged herein were predicated upon the fact that if the participation of the Directors and Management of

ITT in the plan and scheme became known they would have to be named as parties defendant in this action.

(c) The efforts to avoid any judicial inquiry into the matters set forth herein caused information to be submitted to this Court which all counsel in Herbst knew or should have known to be false and misleading, to wit, that at the time of the Withdrawal from Herbst, Lawson F. Bernstein was Pre-Trial Counsel in Herbst.

(d) The information set forth in ¶ 142(c) was and is false.

(e) The information set forth in ¶ 142(c) was submitted to this Court to deceive and mislead it.

(f) The information set forth in ¶ 142(c) was submitted to the Court in Herbst to deceive and mislead it.

(g) In the interests of ITT and ITT's shareholders, this Court should intervene for the purpose of requiring that all litigation and claims against ITT in respect of the plan and scheme alleged herein be litigated, settled or disposed of under the aegis of this Court and its officers, with ITT and its shareholders receiving such independent representation as will insure an honest and arms-length disposition of the conflicting claims and disputes including claims against ITT and its former and present Directors and Management for indemnification.

143. Plaintiffs have no adequate remedy at law.

* * * * * *

Plaintiffs have made no demand upon ITT or its Board of Directors to bring this action. Such demand would be futile and unavailing in that:

(a) A prior ITT Board of Directors refused to take action thereon despite the fact that they knew about the acts complained of herein;

(b) A majority of the present Board of Directors of ITT were members of the Board referred to in (a);

(c) The present Board of Directors of ITT are named as defendants herein;

(d) Pursuant to a proposed settlement and compromise of Herbst filed in the United States District Court for the District of Connecticut on March 12, 1976, ITT gave notice to its shareholders that as a part of the proposed settlement and compromise ITT intends to issue releases to all of its present directors and those present and former directors named as defendants in this suit; the notice stated further that ITT intends to use the said releases to seek the dismissal of certain claims against its directors which form an integral part of the claims alleged herein.

Demand on the stockholders of ITT has not been made by plaintiff because:

(a) The wrongs complained of herein are incapable of stockholder ratification;

(b) The management of ITT's affairs is entrusted to its directors, not its stockholders;

(c) The large number and different classes of ITT stockholders renders a proxy contest futile.

WHEREFORE, plaintiffs demand judgment:

(a) Requiring the defendants to indemnify ITT from all liability, damage, costs and expense incurred by ITT as a result of the wrongful acts alleged herein.

(b) Granting interim or final equitable relief to insure that ITT and its shareholders are adequately protected in the settlement, administration or other disposition of the claims in Herbst.

(c) Granting interim or final equitable relief to insure ITT and its shareholders are adequately protected in the litigation, settlement, administration or other disposition of the claims brought on behalf of ITT and its shareholders as a result of the wrongful acts set forth herein.

(d) Requiring Lazard-NY, Lazard-Paris, Mediobanca and Dreyfus to account to ITT for all profits and fees realized by them as a result of the sale of the Shares.

(e) Assessing punitive damages against defendants Lazard-NY, Mediobanca, Dreyfus, Lazard-Paris, Felix G. Rohatyn and Harold S. Geneen in the sum of $50,000,000.

(f) Awarding the plaintiffs the costs and disbursements of this action, including reasonable fees and expenses.

(g) Granting plaintiffs such other and further relief as may be just and proper.

Dated: New York, New York
May , 1976

NETTER & SPIEGEL

By_____
A Member of the Firm
Attorneys for Plaintiffs
Louis and Ruth Blecker
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AFFIDAVIT OF MATHIAS L. SPIEGEL DATED MAY 25, 1976 IN SUPPORT OF MOTION (pp. A65-A66)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RUTH BLECKER and LOUIS BLECKER,

Plaintiffs,

v.

LAZARD FRERES & CO., et al.,

Defendants.

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73 Civ. No. 4057 (WCC)

AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

Mathias L. Spiegel, being duly sworn, deposes and says:

1. I am a member of the firm of Netter & Spiegel, attorneys for the plaintiffs in the within action.

2. This affidavit is submitted in support of plaintiffs' motion for leave to file a second amended complaint.

3. Subsequent to March 11, 1974, the date of filing of plaintiffs' amended complaint, plaintiffs became aware of additional facts with respect to the plan and conspiracy alleged in the annexed second amended complaint uncovered in investigations by agencies of the United States Government.

4. On April 2, 1976 plaintiffs received in the mail from ITT a Notice of Hearing and Stipulation of Settlement with respect to a proposed settlement of Herbst v.

ITT et al., Civ. No. 15,155 District of Connecticut ("Herbst"), a copy of which is annexed hereto.

5. On April 9, 1976 a pre-motion conference was held by this Court on plaintiffs' request for permission to move for leave to file a second amended complaint.

6. On May 20, 1976 plaintiffs filed in the United States District Court for the District of Connecticut objections to the Stipulation of Settlement in Herbst, a copy of which is annexed hereto.

MATHIAS L. SPIEGEL

Sworn to before me this
25th day of May, 1976.

ALAN D. MARCUS
Notary Public, State of New York
No. 31-2502100
Qualified in New York County
Commission Expires March 30, 1977

NOTICE OF HEARING OF PROPOSED SETTLEMENT IN HERBST v. ITT ET AL. CIV. NO. 15,155 DISTRICT OF CONNECTICUT ANNEXED TO MOTION (pp.A67-A70)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

HILDE HERBST and AARON M. FINE,

—vs—

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, et al.

Civil No. 15,155

NOTICE OF HEARING

TO: ALL PRESENT SHAREHOLDERS OF INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

PLEASE TAKE NOTICE that pursuant to an Order of the United States District Court for the District of Connecticut filed March 12, 1976, a hearing (the Hearing) will be held in the North Courtroom, United States Courthouse, 450 Main Street, Hartford, Connecticut at 10:00 A.M. on June 4, 1976, for the purpose of determining whether a proposed settlement and compromise of the above-entitled action, which is being maintained on behalf of a class consisting of all persons who exchanged shares of Hartford Fire Insurance Company (Hartford) common stock for shares of International Telephone and Telegraph Corporation (ITT) Cumulative Preferred Stock $2.25 Convertible Series N (N Preferred) pursuant to the Exchange Offer dated May 26, 1970 (the Exchange Offer) and who have not requested to be excluded from the class, should be approved and confirmed by the Court as fair, reasonable and adequate, and if such settlement and compromise is approved, whether and in what amount attorneys' fees and disbursements should be awarded to plaintiffs' attorneys in connection with the prosecution of the litigation on behalf of the class. The Hearing may be adjourned from time to time by the Court on the date of the Hearing or at any adjourned session thereof without further notice.

A copy of the Stipulation of Settlement, dated March 11, 1976, setting forth the terms and provisions of the proposed settlement and compromise of the above entitled action is annexed hereto. Briefly summarized, under the settlement a former Hartford shareholder who exchanged his stock for ITT N Preferred stock can elect one of two options: (a) receipt of ITT common stock having a value of $1.25 for each share of Hartford stock exchanged by him, or (b) participation in a judgment whereby ITT, if the exchange were ultimately adjudicated to be taxable, would reimburse him for any resulting increase in his net overall tax liability with interest (taking into account any other years involved). Approximately 22 million shares of Hartford common stock were acquired by ITT in connection with the Exchange Offer.

In addition, if the settlement is approved, ITT will pay in shares of its common stock the fees, disbursements and expenses of the attorneys for the plaintiffs and the class in the *Herbst* action in such amounts as the Court in its discretion shall award. Such attorneys have indicated an intention to make application in an amount not to exceed $3.5 million and ITT has reserved the right to object to such an application. It should not be assumed that the Court will award fees and disbursements in the foregoing amount.

As part of the settlement and compromise, ITT proposes to issue releases to the individual defendants (certain present and former directors of ITT) and all of ITT's present directors, discharging them, and each of them, from any and all claims which have been or which might have been asserted on behalf of ITT against such persons in connection with or arising out of the matters, transactions and occurrences recited, described or referred to in the pleadings and proceedings in the *Herbst* action.

At the Hearing, present shareholders of ITT may be heard as to whether ITT should execute and deliver the releases described above; *provided*, however, that no person shall be heard or his objections considered by the Court, unless such person shall have filed with the Clerk of the Court and shall have served upon the attorneys for plaintiffs, Silverman & Ha[illegible]s, 75 Rockefeller Plaza, New York, New York 10019 and upon the attorneys for ITT, Covingt[illegible] & Burling, 888 Sixteenth Street, N.W., Washington, D.C. 20006, on or prior to May 25, 1976, a written statement of his position with respect to the execution and delivery by ITT of the releases described above in connection with the settlement, together with copies of all papers and briefs to be submitted by him to the Court at the Hearing. Any shareholder of ITT who fails to object to the execution and delivery of these releases in connection with the settlement in the manner prescribed above shall be deemed to have waived, and shall be foreclosed from raising, any objection thereto.

Description of the Herbst Action

On May 26, 1970, ITT made an offer to the shareholders of Hartford to acquire their Hartford common stock on the basis of one share of N Preferred of ITT for each share of Hartford common stock held by them (the Exchange Offer). After reviewing ruling letters of the Internal Revenue Service (IRS), tax counsel for Hartford and tax counsel for ITT gave opinions, on the terms and conditions stated therein, which opinions were referred to in the Exchange Offer, that the exchange would qualify as a B Reorganization and that, for federal income tax purposes, (i) no gain or loss would be recognized to Hartford shareholders who exchanged their Hartford stock for shares of N Preferred, and (ii) the basis for the shares of N Preferred received by the Hartford shareholders would be the same as the basis of the shares of Hartford common stock surrendered in exchange therefor.

Plaintiffs, basing their action upon the federal securities laws, contended that the Exchange Offer should have disclosed that there was a risk that the exchange of shares might be declared a taxable event by the IRS, resulting in a taxable gain or loss to Hartford shareholders at the time of the Exchange, depending upon whether the shareholder's basis for his Hartford stock was greater or less than $42.75, the value of the ITT N Preferred on the day the Exchange Offer became effective.

On behalf of themselves and all class members, plaintiffs sought to recover from ITT, ITT's directors at the time the Exchange Offer was distributed and Lazard Freres & Co., an investment banking firm which assisted ITT in the acquisition of Hartford (the defendants), damages in an amount commensurate with the amount ITT would, in plaintiffs' view, have had to offer to the class at the time of the Exchange Offer if at that time it had disclosed the risk of taxability described above, any taxes assessed against class members as a result of the exchange, and such other and further relief as the Court might deem proper. Defendants have filed answers denying the material allegations of the complaint and have asserted that the claims alleged therein are without merit. In entering into the proposed settlement, defendants continue to deny any wrongdoing.

On March 6, 1974, the IRS revoked, retroactively, rulings previously issued by it which were reviewed by tax counsel for ITT and tax counsel for Hartford in giving their opinions that the exchange of shares pursuant to the Exchange Offer would not be taxable. Certain Hartford shareholders were requested by IRS to sign waivers of the Statute of Limitations and notices of statutory deficiencies were served on certain Hartford shareholders. ITT is opposing the efforts of the IRS to assess taxes against the former Hartford shareholders arising from their participation in the Exchange Offer and various cases are pending which are separate from this action in which the issue of taxability is being contested.

By letters dated March 11, 1974, and April 4, 1974, ITT informed class members that on the terms stated therein and in the event the exchange were ultimately adjudicated to be taxable, ITT would reimburse any former Hartford shareholder whose net overall tax liability with interest (taking into account any other years involved) is increased as a result of the imposition of taxes on the exchange of his shares.

Pending Securities and Exchange Commission Investigation

Certain of the matters involved in the litigation to be disposed of under the Stipulation of Settlement are the subject of an investigation by the United States Securities and Exchange Commission. The investigation has been pending for some time and ITT has not been advised when it will be terminated or what its ultimate disposition may be.

Reasons for ITT's Issuing Releases to its Directors

The settlement and compromise of the *Herbst* action, as described in the annexed Stipulation of Settlement, involves the acceptance by ITT of a court judgment requiring it to provide to members of the class on whose behalf that action is being prosecuted the benefits due to them under the settlement. Whether ITT should voluntarily accept such a court judgment is, like other business questions, ordinarily a matter for determination by ITT's Board of Directors.

However, in addition to the *Herbst* action, there presently are pending four derivative actions commenced by shareholders of ITT, purportedly on ITT's behalf, relating to the issue of what liability may result in the event that the exchange is determined to have been a taxable event. Certain present and former directors of ITT are named as defendants in these actions, including, in one or more of them, all of the directors who are defendants in the *Herbst* action. These actions are: *Boehm* v. *R. E. Bennett, et al.*, 74 Civ. 1132 (WCC), and *Blecker* v. *Lazard Freres & Co., et al.*, 73 Civ. 4057 (WCC), both pending in the United States District Court for the Southern District of New York, *Shapiro* v. *E. R. Black, et al.*, Index No. /74, Supreme Court of the State of New York, County of New York, and *Auerbach* v. *Pomeroy Day, et al.*, CA 4481, in the Court of Chancery of the State of Delaware in and for New Castle County.

Each of these actions alleges, in effect, that if ITT is required to make any payment to the Hartford shareholders as a result of the exchange or to reimburse any Hartford shareholder for taxes assessed as a result of an ultimate determination that the exchange was a taxable event, then the defendants, including the directors of ITT, should reimburse ITT for all such payments and tax reimbursements.

The attorneys for the plaintiffs and the class in the *Herbst* action, Silverman & Harnes, 75 Rockefeller Plaza, New York, New York 10019, on the basis of their investigations of the facts, circumstances and transactions involved in that action and the discovery proceedings had therein, have concluded that no evidence has been adduced in this case which would sustain a claim by ITT against its directors and such attorneys have further concluded that all actions taken by the directors who are defendants in the *Herbst* action were taken for the benefit of ITT.

A Special Committee was appointed by ITT's Board of Directors, consisting of two Board members, William Elfers and Anthony A. J. Bryan (neither of whom was a director of ITT at the time of the Exchange Offer), and Paul Hallingby, Jr., Chairman of the Board and Chief Executive Officer of White Weld & Co., an independent investment banking firm, to review the terms and provisions of the proposed settlement and compromise of the *Herbst* action and to make a determination as to whether the proposed settlement and compromise, including the provision therein for the execution and delivery by ITT of the above-described releases to its directors and the consequent dismissal with finality of all of these litigations as to them, is in the best interests of ITT and of its shareholders. The Special Committee has determined that the proposed settlement is in the best interests of ITT and its shareholders and so reported to the ITT Board. Acting upon the Special Committee's recommendation, ITT's Board approved the proposed settlement and compromise as being in the best interests of the Company and all of its shareholders.

Effect of the Proposed Releases

If the Court authorizes the execution and delivery by ITT of the releases described above, the ITT directors receiving such releases who are defendants in the *Boehm, Blecker, Shapiro* and *Auerbach* actions intend to utilize them to move for dismissal of such actions (the *Blecker* action only in part) on the ground that such persons' liabilities to ITT, if any, as claimed in the aforesaid actions have been discharged by the releases. In addition, shareholders of ITT will be barred from asserting any further claims against such persons arising directly or indirectly out of the matters, transactions and occurrences recited, described or referred to in the pleadings and proceedings in the *Herbst* action.

Dated: New York, New York
March 26, 1976

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

s/ JOHN J. NAVIN
(JOHN J. NAVIN, *Secretary*)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

HILDE HERBST and AARON FINE, *Plaintiffs*, v. INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION, et al., *Defendants*.	Civil No. 15,155

STIPULATION OF SETTLEMENT

WHEREAS, on November 10, 1969, the shareholders of Hartford Fire Insurance Company ("Hartford") voted in favor of a plan of merger whereby a wholly-owned subsidiary of International Telephone and Telegraph Corporation ("ITT") would be merged into Hartford, and pursuant to which each share of Hartford Common Stock would be converted into a share of ITT Cumulative Preferred Stock $2.25 Convertible Series N ("Series N Preferred"); and

WHEREAS, in connection with the aforesaid merger, ITT obtained rulings from the Internal Revenue Service ("IRS") that the exchange of Hartford stock for ITT Series N Preferred would qualify as a reorganization pursuant to Section 368(a)(1)(B) of the Internal Revenue Code (a "B Reorganization"), and such exchange therefore would not be a taxable event to the exchanging shareholder; and

WHEREAS, in December, 1969, the Commissioner of Insurance of the State of Connecticut (the "Insurance Commissioner") disapproved of the aforesaid merger between ITT and Hartford; and

WHEREAS, on May 23, 1970, the Insurance Commissioner approved of an offer to be made by ITT to acquire Hartford stock in exchange for ITT Series N Preferred, on a share for share basis (the "Exchange Offer"); and

WHEREAS, tax counsel for Hartford and tax counsel for ITT, after reviewing the IRS ruling letters, gave opinions, on the terms and conditions stated in said opinions, that the exchange would qualify as a B Reorganization and that, for federal income tax purposes, (i) no gain or loss would be recognized to Hartford shareholders who exchanged their stock for ITT Series N Preferred and (ii) the basis for the shares of ITT Series N Preferred received by the Hartford shareholders in exchange for their Hartford Common Stock would be the same as the basis of the shares of Hartford Common Stock surrendered in exchange therefor; and

WHEREAS, on or about May 26, 1970, ITT mailed the Exchange Offer to all Hartford shareholders; and

WHEREAS, the Exchange Offer informed the Hartford shareholders of the tax rulings obtained from IRS and of the foregoing opinions issued by tax counsel; and

WHEREAS, Hartford shareholders owning in excess of ninety-five (95) percent of Hartford's outstanding stock accepted the Exchange Offer; and

WHEREAS, on July 6, 1972, Plaintiff Hilde Herbst commenced the above-entitled action on behalf of all persons who exchanged Hartford Common Stock for Series N Preferred pursuant to the Exchange Offer (the "Class"); and

WHEREAS, the Complaint herein, as amended (the "Complaint") alleged that the representations made in the Exchange Offer with respect to the federal tax consequences of the acceptance of the Exchange Offer were false and misleading and that, if full disclosure had been made, members of the Class would have received additional compensation in connection with such exchange; and

WHEREAS, defendants filed answers in which they denied all material allegations of the Complaint, and said defendants continue to deny all charges of wrongdoing or liability whatsoever; and

WHEREAS, by order dated May 11, 1973, the Court determined that this action may be maintained as a class action under the Federal Rules of Civil Procedure on behalf of all Hartford shareholders who exchanged their Hartford Common Stock for Series N Preferred pursuant to the Exchange Offer, except such persons as may request to be excluded from such class, and such order was affirmed on April 3, 1974, by the United States Court of Appeals for the Second Circuit; and

WHEREAS, on January 16, 1974, plaintiff Hilde Herbst moved to amend and supplement her complaint by adding Lazard Freres & Co. ("Lazard") as a party defendant and by seeking recovery against defendants of any taxes assessed by IRS against members of the Class in the event that it should be determined that the Exchange Offer did not qualify as a B Reorganization and the prior IRS rulings should retroactively be revoked, and such motion was granted by the Court; and

WHEREAS, on March 6, 1974, IRS revoked retroactively its rulings issued in connection with the proposed merger that such merger would be tax free; and

WHEREAS, by letters dated March 11 and April 4, 1974, ITT informed the former Hartford shareholders that if the exchange were ultimately adjudicated to be taxable, it would reimburse such shareholders "whose net overall tax liability with interest (taking into account any other years involved) is increased as a result of the imposition of tax liability on the exchange of his shares" (the "1974 ITT Reimbursement Offer"); and

WHEREAS, defendant ITT acknowledges that the *Herbst* action was one of the factors in ITT's decision to make its commitment to reimburse members of the Class for such liability; and

WHEREAS, after the 1974 ITT Reimbursement Offer was publicly announced, four derivative actions were commenced, purportedly on ITT's behalf, naming as defendants, *inter alia*, certain present and former directors of ITT (including, in one or more of these actions, all of the present and former directors of ITT who are defendants in the above-entitled action—hereinafter the "Director-Defendants"), wherein it is alleged in substance that, in the event that ITT should as a result of the representations made in the Exchange Offer with respect to the federal tax consequences of acceptance thereof make any payment to the Class or incur costs and expenses arising from the claims of the Class, the defendants should be required to indemnify ITT for such payment, costs and expenses; and

WHEREAS, by endorsement dated March 27, 1974, Aaron M. Fine was granted leave to intervene as a party plaintiff herein; and

WHEREAS, notices were mailed to members of the Class on August 12, 1974, informing the Class of (a) the pendency of the action and (b) the right of each member of the Class to enter an appearance through counsel of his own choosing or to exclude himself from the Class; and

WHEREAS, John W. Rafal, a member of the Class other than the plaintiffs, entered an appearance; and

WHEREAS, certain members of the Class requested exclusion from the Class; and

WHEREAS, ITT and certain other defendants moved for summary judgment in this action on the grounds that the exchange qualified as a B Reorganization and that the Class would not be subject to any risk of tax liability; and

WHEREAS, the aforesaid motions for summary judgment are pending and undetermined; and

WHEREAS, the attorneys for plaintiffs and the Class conducted extensive investigations of the facts, circumstances and transactions involved in this action, including discovery and inspection of records, documents and papers in connection therewith, and the taking of oral depositions; and

WHEREAS, on the basis of the foregoing investigation and discovery, the attorneys for plaintiffs and the Class have concluded that no evidence has been adduced in this case which would sustain a claim against the Director-Defendants and such attorneys have further concluded that all actions taken by the Director-Defendants were taken for the benefit of ITT; and

WHEREAS, on the basis of the foregoing investigation and discovery, plaintiffs and their counsel have concluded that it would be in the best interests of plaintiffs and the Class to settle and dismiss this action as against all the defendants without any payment other than the amounts provided for herein; and

WHEREAS, the parties to this Stipulation are informed of the existence of all prior and pending governmental actions and proceedings, including a pending investigation by the Securities and Exchange Commission and all private litigations involving claims related to the claims asserted in the Complaint herein and, notwithstanding, the parties are desirous of moving forward with the settlement and compromise embodied in this Stipulation and of disposing of this litigation as being in the best interests of the plaintiffs and the Class and of ITT and its shareholders; and

WHEREAS, defendants have agreed to enter into this Stipulation in order to avoid further lengthy and time-consuming litigation and the burden, inconvenience and expenses connected therewith, without in any way acknowledging any fault or liability; and

WHEREAS, it is proposed hereunder to compromise and settle, in accordance with the terms and provisions of this Stipulation, all claims, demands and causes of action which plaintiffs and each member of the Class (except those who have excluded themselves from the Class) have or may have, or which have been or might have been asserted on their behalf, against the defendants, or any of them, or which have been or might have been asserted by defendant ITT against the Director-Defendants, or any of them, in connection with or arising out of any of the events, matters or transactions alleged or which might have been alleged based on the matters, transactions and occurrences recited, described or referred to in the pleadings and proceedings herein; and

WHEREAS, plaintiffs and their counsel are satisfied that the terms and provisions of the settlement set forth herein are fair, reasonable and adequate and in the best interests of plaintiffs and the Class; and

WHEREAS, ITT proposes hereunder, in accordance with and subject to the terms and provisions of this Stipulation, to execute and deliver releases in favor of the Director-Defendants, and each of them, and all of ITT's present directors, effectively discharging them from all claims, demands and causes of action which ITT has or might have in connection with or arising out of any of the matters, transactions and occurrences recited, described or referred to in the pleadings and proceedings herein; and

WHEREAS, a Special Committee (the "Special Committee") was appointed by ITT's Board of Directors, consisting of two members of the Board who were not directors of ITT at the time of the Exchange Offer and an independent investment banker, and said Committee reviewed the terms and provisions of the proposed settlement and compromise of this action, including the provision for execution and delivery by ITT of the releases described in the immediately-preceding paragraph, for the purpose of determining its fairness and reasonableness and whether it would be in the best interests of ITT and its shareholders to consummate the same; and

WHEREAS, the Special Committee has determined that the terms and provisions of the proposed settlement and compromise are fair and reasonable and in the best interests of ITT and all of its shareholders and that the releases to be executed and delivered by ITT pursuant thereto are an appropriate and necessary provision of the settlement because further prosecution of the actions which they are intended to release, or any of them, against the Director-Defendants and ITT's present directors is not and would not be in the best interests of ITT or of its shareholders, and has recommended to the Board of Directors of ITT that such settlement and compromise be approved; and

WHEREAS, acting upon the recommendation of the Special Committee, the Board of Directors of ITT approved the proposed settlement and compromise as being in the best interests of ITT and all of its shareholders.

NOW, THEREFORE, IT IS STIPULATED AND AGREED by and between the undersigned that the subject matter of this action shall be settled and compromised, upon the approval of the Court pursuant to Rule 23(e) and Rule 23.1 of the Federal Rules of Civil Procedure in the manner and upon the terms and conditions hereinafter set forth;

1. Neither this Stipulation nor any proceedings hereunder shall in any event be construed as or deemed to be, on the part of plaintiffs, or either of them, an admission of lack of merit in this action, or, on the part of the named defendants, or any of them, or any of their respective present and former directors, officers, employees, agents, partners or attorneys, an admission of any liability or wrongdoing whatsoever, or that any of the allegations of the complaint are true; nor shall this Stipulation, or any of the terms hereof, or any of the negotiations or proceedings connected herewith, be offered or received in evidence for any purpose other than for purposes of these settlement and dismissal proceedings; *provided*, however, that nothing herein contained shall prevent this Stipulation and the terms hereof from being used, offered and received in evidence in any proceeding to enforce any or all of the terms hereof.

2. Each member of the Class who has not requested to be excluded from the Class and who files a properly executed Proof of Claim and Release in the form attached hereto as Exhibit A* ("Proof of Claim") in compliance with the provisions of the order entered pursuant to paragraph 19 hereof (the "Hearing Order") shall be entitled to elect to participate in the benefits provided under either paragraph "3" or paragraph "5" hereof, but not under both as to the same shares. Any such election shall be irrevocable and binding upon such member of the Class upon the expiration of the period for filing claims as provided in paragraph "7" hereof.

3. In full and final settlement, satisfaction and discharge of all claims and causes of action which are asserted or which might have been asserted on behalf of the Class in connection with or arising out of any of the matters, transactions and occurrences recited, described or referred to in the pleadings and proceedings in this action, ITT shall pay to each member of the Class or his heirs, successors by operation of law, assigns or legal representatives, who files a properly executed Proof of Claim in compliance with the provisions of the Hearing Order and who elects in such Proof of Claim to receive the benefits provided for in this paragraph "3", the equivalent in ITT common stock of $1.25 for each share of Hartford stock exchanged by such member of the Class pursuant to the Exchange Offer. For purposes of the computations made pursuant to this paragraph "3", and pursuant to paragraph "16" hereof, ITT common stock shall be valued at the average of the daily closing prices of such stock on the New York Stock Exchange for the twenty (20) trading days immediately preceding the effective date of this Stipulation. Election by a member of the Class to receive the benefits provided by this paragraph "3" shall preclude such Class member from receiving any compensation from ITT for tax liability pursuant to ITT's letters to former Hartford shareholders dated March 11 and April 4, 1974.

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* Exhibit A is not annexed hereto, but is annexed to the original Stipulation of Settlement filed with the Court.

4. Hartford National Bank shall be the disbursing agent ("Disbursing Agent") for the purpose of distributing the ITT common stock to members of the Class who elect to receive the benefits provided for in paragraph "3" hereof. The Disbursing Agent shall, at the direction of each such Class member, purchase or sell fractional share interests in ITT common stock for any such Class member who shall be entitled hereunder to fractional shares so that certificates for whole shares only shall be distributed. The fees and expenses of the Disbursing Agent shall be paid by ITT.

5. In full and final settlement, satisfaction and discharge of all claims and causes of action which are asserted or which might have been asserted on behalf of the Class in connection with or arising out of any of the matters, transactions and occurrences recited, described or referred to in the pleadings and proceedings in this action, ITT shall, with respect to each member of the Class or his heirs, successors by operation of law, assigns or legal representatives, who files a properly executed Proof of Claim in compliance with the provisions of the Hearing Order and who elects in such Proof of Claim to receive the benefits provided for in this paragraph "5", with respect to the shares to which such election relates, reimburse such member of the Class as a result of any increase in such member's overall tax liability with interest (taking into account any other years involved) incurred as a result of the imposition of tax liability on the exchange of those shares. The reimbursement referred to in this paragraph "5" shall be made in accordance with, and subject to the terms and conditions of the 1974 ITT Reimbursement Offer as set forth in ITT's letters to former Hartford shareholders dated March 11 and April 4, 1974. The following items are intended to clarify certain aspects of those letters (references to shares of Series N Preferred stock shall be deemed, when appropriate, to refer to shares of ITT common stock into which shares of Series N Preferred stock have been or are converted):

(a) The estate of a member of the Class who dies while holding shares of Series N Preferred shall not have any reimbursement with respect to such shares offset by reason of any sale or other disposition of those shares by the estate.

(b) A member of the Class who sells shares of Series N Preferred at a loss shall not have any offset by reason of such loss except to the extent the loss is actually used or utilizable in a tax year ending on or prior to the last day of his tax year in which there occurs the "final adjudication of taxability" (as that term is used in the April 4, 1974 letter). A member of the Class who sells shares of Series N Preferred thereafter shall suffer no offset by reason of such sale.

(c) In calculating the amount of reimbursement to which the member of the Class shall be entitled, the fact that the reimbursement itself may be additional taxable consideration shall be taken fully into account by including in the amount of the reimbursement the amount of tax, provided that (i) it is judicially determined that the amount of reimbursement is taxable, or (ii) in advance of such judicial determination, ITT agrees to do so.

6. Promptly after the signing of this Stipulation, ITT shall furnish to the attorneys for plaintiffs a list of the names and addresses of all members of the Class to whom notice of the pendency of this action was mailed, which list shall have been updated by ITT to reflect the last known name and mailing address, as reflected in the books and records of ITT, of each member of the Class whose name appears on such list.

7. In the event this Stipulation and the terms hereof are approved by the Court, to participate in or be entitled to any benefits contemplated by this Stipulation, a member of the Class who has not requested to be excluded from the Class shall file with the Court a properly executed Proof of Claim. Such Proof of Claim shall be filed no later than thirty (30) days after the date of the hearing held in accordance with the Hearing Order. Each such Proof of Claim shall be deemed to have been filed when posted, if mailed by first-class or air mail, postage prepaid, and addressed in accordance with the instructions given therein. Any Proof of Claim filed otherwise shall be deemed to have been filed at the

time it is actually received by the addressee designated in the Proof of Claim to receive it. The Proof of Claim must be complete and contain no deletions or material modifications of any of the printed material contained therein (except for paragraph 9, completion of which is optional).

8. For purposes of effectuating this Settlement, counsel for plaintiffs shall lease and maintain a numbered Post Office Box of adequate size. Said Post Office Box shall be maintained under the joint control of counsel for plaintiffs and counsel for ITT. All notices to Class members shall designate said Post Office Box as the return address. Counsel for plaintiffs shall be responsible for the initial receipt of all responses to said notices, and shall preserve all entries of appearance, Proofs of Claim and any and all other written communications from members of the Class or any other person in response to said notices. All written responses received from members of the Class and all written responses to inquiries by members of the Class shall be available at all reasonable times for inspection by all counsel in this action. Copies of such correspondence shall be furnished to the Court at least once every two weeks. At least once each week during the period commencing with the mailing of the Notice of Hearing and forms of Proof of Claim pursuant to the Hearing Order, counsel for plaintiffs shall furnish to counsel for ITT a list setting forth the names and addresses of each member of the Class who has filed a Proof of Claim with respect to the exchange of one-thousand (1,000) or more shares of Hartford stock, which list shall specify with respect to each such Class member (a) the number of Hartford shares involved in such claim; and (b) the benefit(s) elected with respect to such shares.

9. Promptly upon receipt of each Proof of Claim, a representative to be designated by counsel for plaintiffs, together with a representative to be designated by counsel for ITT, shall undertake whatever investigation they jointly deem reasonable or necessary to verify the accuracy and completeness of said Proof of Claim. If they, or either of them, determine that a Proof of Claim does not entitle the member of the Class submitting such Proof of Claim to receive payment under this Stipulation, promptly and as soon as practicable they or he shall identify each Proof of Claim so disputed and shall attach thereto a written statement of the reasons for contesting it. Each Proof of Claim which is not so contested, or which is later approved by the Court pursuant to paragraphs "10" and "11" of this Stipulation, shall constitute a "Valid Proof of Claim"; and all other Proofs of Claim shall constitute "Disputed Proofs of Claim."

10. Upon the request of counsel for the parties, any person who has filed a Disputed Proof of Claim may be required to furnish additional proof in such form and with such supporting documents attached as may reasonably be necessary to verify the accuracy and completeness of said Disputed Proof of Claim. In the event that counsel for the parties cannot agree as to the necessity for additional proof with respect to a Disputed Proof of Claim, the Court shall be asked to determine whether the claim should be allowed without additional proof, or whatever additional proof shall be required to be submitted.

11. In the event that any Disputed Proof of Claim is contested by counsel for plaintiffs or by counsel for ITT even after the claimant has submitted the additional proof which may be required pursuant to paragraph "10" of this Stipulation, the Court shall be asked to determine whether the claim shall be allowed.

12. If the Disputed Proof of Claim of any member of the Class is disallowed in whole or in part by the Court, counsel for plaintiffs, promptly and as soon as practicable after such disallowance, shall notify such member of the Class that his claim has been disallowed and shall, to the extent known, explain the reasons for such disallowance.

13. The attorneys for plaintiffs shall, within sixty (60) days after the last date for filing Proofs of Claim, furnish to counsel for ITT a schedule listing the names and addresses of all members of the Class who have filed Valid Proofs of Claim electing to receive the benefits provided by paragraph "3" of this Stipulation and setting forth the number of shares of ITT common stock which each such member of the Class shall be entitled to receive. Thereafter, and provided that this Stipulation shall have

become effective, ITT shall, within thirty (30) days after the entry of an order determining which of the Disputed Proofs of Claim should be allowed or disallowed, or if no Proofs of Claim are disputed, within sixty (60) days after the receipt by counsel for ITT of the schedule referred to in this paragraph "13", deliver to the Disbursing Agent for distribution to those members of the Class who have filed Valid Proofs of Claim electing to receive the benefits provided by paragraph "3" of this Stipulation, the stock certificates to be distributed thereto. The Disbursing Agent shall make a distribution of such certificates to Class members and shall make a prompt settlement with respect to fractional shares pursuant to paragraph "4".

14. Promptly upon entry of the Hearing Order, ITT shall advance to the attorneys for plaintiffs shares of ITT common stock having a net sales value of $50,000 at the time of delivery for the payment of reasonable and necessary expenses of processing the settlement and giving notice to members of the Class. Within one hundred twenty (120) days after the effective date of this Stipulation, plaintiffs' attorneys shall account to ITT for all expenses reasonably and necessarily incurred in processing the settlement and shall pay over to ITT any shares or funds remaining from the $50,000 advanced pursuant to this paragraph "14", together with the dividends, appreciation or income, if any, on the shares advanced to the attorneys for plaintiffs by ITT and the interest or income, if any, on any moneys realized from the sale of such shares. The attorneys for plaintiffs have no investment obligations with respect to the shares advanced and/or the moneys realized from the sale thereof. If the reasonable and necessary expenses incurred by plaintiffs' attorneys in processing the settlement and the giving of notice to members of the class exceed the said advance of $50,000 and the income, if any, received thereon, ITT shall reimburse said attorneys for such additional expenses. For the purposes of this paragraph "14", the term "processing the settlement" shall be deemed to include all administrative and other expenses reasonably and necessarily incurred in connection with the matters set forth in paragraphs "6" through "13" hereof, but shall not be deemed to include any amounts in respect of legal fees payable to plaintiffs' attorneys under paragraph "16" hereof.

15. The administration of the settlement, the making of all payments and conferring of all benefits provided for herein, and the decision of all disputed questions of law and fact with respect to the validity of any claim, shall be subject to the jurisdiction of the Court. If a Special Master is appointed to assist the Court pursuant to Rule 53(a) of the Federal Rules of Civil Procedure, the fees and expenses of the Special Master shall be paid by ITT.

16. ITT shall pay in shares of common stock of ITT such fees, allowances and disbursements of the attorneys for plaintiffs in this action in such amounts as the Court in its discretion shall award. ITT reserves the right to be heard with respect to the fees and disbursements applied for by said attorneys. Payment of such fees, allowances and disbursements shall be made in shares of ITT common stock within ten (10) days from the date this Stipulation becomes effective.

17. ITT, subject to the approval of the Court, shall execute and deliver releases in favor of the Director-Defendants and all of ITT's present directors discharging them, and each of them, from any and all claims, demands, and causes of action which have been or which might have been asserted on behalf of ITT against such persons in connection with or arising out of any of the matters, transactions and occurrences recited, described or referred to in the pleadings and proceedings herein. The parties understand that the persons receiving these releases intend to utilize them to move for dismissal of (i) the cases of *Boehm* v. *R. E. Bennett, et al.*, 74 Civ. 1132 (WCC), United States District Court for the Southern District of New York, *Shapiro* v. *E. R. Black, et al.*, Index No. /74, Supreme Court of the State of New York, County of New York, and *Auerbach* v. *Pomeroy Day, et al.*, CA 4481, in the Court of Chancery of the State of Delaware in and for New Castle County, and (ii) the claims asserted in paragraphs 48 through 52 of the amended complaint in the case of *Blecker* v. *Lazard Freres & Co., et al.*, 73 Civ. 4057 (WCC), United States District Court for the Southern District of New York, on the ground that such persons' liabilities to ITT, if any, as claimed in the actions referred to in this paragraph "17" have been discharged by the execution and delivery of the aforesaid releases.

18. ITT shall give notice to all of its shareholders that it is seeking approval of this Court to issue the releases described in paragraph "17" and in said notice shall inform such shareholders that (a) said releases are intended, *inter alia*, to discharge all claims, demands and causes of action which are alleged or which might have been alleged against the Director-Defendants and its present directors in connection with or arising out of any and all of the matters, transactions and occurrences recited, described, or referred to in the pleadings and proceedings in the actions referred to in paragraph "17" hereof, and (b) at the Hearing with respect to the settlement scheduled by the Hearing Order, they will be afforded an opportunity to be heard as to whether the execution and delivery of such releases by ITT should be approved by the Court pursuant to Rule 23.1, Federal Rules of Civil Procedure.

19. Promptly after the execution and filing of this Stipulation, the parties shall jointly apply for and consent to the entry of the Hearing Order substantially in the form annexed hereto as Exhibit B.*

20. Upon approval by the Court of this Stipulation and of the settlement described herein, a final judgment (the "Final Judgment") shall be entered,

(a) approving this Stipulation and adjudging all of its terms to be fair, reasonable and adequate, directing the consummation of all of its terms and provisions, including without limitation the terms and provisions of paragraph "17" hereof, and retaining jurisdiction to effectuate the same; and

(b) adjudging that ITT pay (i) to each member of the Class who has filed a Valid Proof of Claim electing the benefits provided by paragraph "3" hereof the compensation to which he is entitled thereunder, and (ii) provided there is a "final adjudication of taxability" as such term is used in ITT's April 4, 1974 letter to former Hartford shareholders, to each member of the Class who has filed a Valid Proof of Claim electing the benefits provided by paragraph "5" hereof, reimbursement for any increase in such class member's net overall tax liability with interest (taking into account any other years involved) incurred as a result of the imposition of tax liability on the exchange of such member's Hartford shares; and

(c) dismissing the Complaint herein on the merits and with prejudice, and discharging the named defendants herein, and each of them, and all of their present and former directors, officers, employees, partners, agents and attorneys, from all claims, demands and causes of action which plaintiffs and each member of the Class (except those who excluded themselves from the Class) have or may have, or which have been or might have been asserted on their behalf against the defendants, or any of them, or which have been or might have been asserted by defendant ITT against the Director-Defendants, or any of them, in connection with or arising out of any of the matters or transactions or occurrences alleged or which might have been alleged in the pleadings and proceedings herein, and permanently barring and enjoining the plaintiffs and any member of the Class (except those members of the Class who excluded themselves from the Class) from the institution or prosecution of any other action or proceeding asserting any such claims, demands or causes of action against the defendants, or any of them, or any of their present or former directors, officers, employees, partners, agents or attorneys.

21. This Stipulation shall become effective upon the entry of the Final Judgment and the expiration of ten (10) days after the time in which to seek appellate review of such final judgment without such review having been sought or, if such review be sought, the expiration of ten (10) days after such review shall have been finally determined by the highest court before which such review is sought, in such manner as to permit the consummation of this Stipulation in accordance with all of its terms and provisions.

22. References herein to members of the Class and to the parties to this action and to their present and former directors, officers, employees, partners, agents and attorneys shall be deemed, when appropriate, to refer to the heirs, successors by operation of law, assigns and legal representatives of such persons, and the terms and provisions of this Stipulation of Settlement shall constitute obligations of and shall inure to the benefit of the heirs, successors by operation of law, assigns and legal representatives of such persons.

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* Exhibit B is not annexed hereto, but is annexed to the original Stipulation of Settlement filed with the court.

23. In the event that (a) the Hearing Order is not entered in accordance with the provisions of paragraph "19" of this Stipulation and substantially in the form attached hereto as Exhibit B, or (b) a Final Judgment is not entered or does not become final as provided in paragraph "20" of this Stipulation and containing all of the provisions set forth in said paragraph, then, and in any such event, at the option of any of the parties and on written notice given to all parties within thirty (30) days after the event which is the basis for the exercise of such option, this Stipulation shall become null and void and of no further force and effect, and this Stipulation and any and all negotiations and proceedings connected with it shall be without prejudice to the rights of any person or party with respect to all matters, and shall not be deemed or construed to be an admission of any kind, and, except as provided in paragraph "1" hereof, evidence thereof shall not be used directly or indirectly in any way, either in this action, or in any other action or proceeding before any court or agency. Neither this Stipulation nor participation in any proceeding hereunder shall constitute or be deemed to be a general or special appearance in this action by any person.

Dated: New York, New York
March 11, 1976

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OBJECTIONS OF LOUIS AND RUTH BLECKER TO PROPOSED SETTLEMENT IN HERBST ACTION DATED MAY 1976 ANNEXED TO MOTION (pp. A80-A87)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

HILDA HERBST and AARON M. FINE, Plaintiffs,	:	
vs.	:	CIVIL NO. 15,155
INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION. et al., Defendants.	:	

OBJECTION TO PROPOSED SETTLEMENT
AND
REQUEST FOR EVIDENTIARY HEARING

Pursuant to paragraph one, page 2 of the Notice of Hearing, dated March 26, 1976 inviting shareholders of ITT to file objections and be heard in the within action ("Herbst") as to whether ITT should execute and deliver releases to its directors, Louis Blecker and Ruth Blecker, shareholders of ITT, by their attorneys NETTER & SPIEGEL, object to the proposed settlement of Herbst and request an Evidentiary Hearing.

The Stipulation of Settlement, dated March 11, 1976, states in paragraph 17, inter alia, that the parties understand that the persons receiving these releases intend to utilize them to move for dismissal of the claims asserted in paragraphs 48 through 52 of the amended complaint in Blecker v. Lazard Freres & Co., et al. ("Blecker") 73 Civ. 4057 (WCC) United States District Court, Southern District of New York. (Exhibit A)

Blecker was commenced on September 21, 1973 derivatively on behalf of ITT and names as defendants the directors of ITT at the time of the Exchange Offer.

In addition to alleging claims arising out of the Exchange Offer, Blecker attacks fees and profits received by Felix G. Rohatyn, Lazard Freres, an investment banking firm in which Mr. Rohatyn is a partner, Mediobanca and Dreyfus Fils, which fees and profits it is alleged were fraudulently concealed pursuant to a plan and scheme arising out of the ITT-Mediobanca transaction.

The plan and scheme alleged in Blecker was uncovered in discovery in Herbst by Lawson F. Bernstein, Esq., during the deposition of D. Nelson Adams, a partner in the law firm of Davis, Polk and Wardwell, counsel to ITT. Mr. Adams produced a copy of an agreement between Lazard Freres and Mediobanca dated November 3, 1969. This agreement stated

that the parties were to share the fees (approximately $2,000,000) paid by ITT to Mediobanca in connection with the ITT-Mediobanca transaction.

Lawson F. Bernstein also discovered in Herbst that Lazard Freres, or its affiliates, had made secret profits of approximately $12,000,000 ("Secret Profits"), through riskless options to purchase, at prices substantially below the market price, some of the shares involved in the ITT-Mediobanca transaction.

On April 9, 1976 a conference was held in Blecker before the Hon. William C. Conner, United States District Judge for the Southern District of New York on plaintiffs' request for leave to file a second amended complaint.

Plaintiffs in Blecker argued to Judge Conner that the allegations contained in the proposed second amended complaint under the headings "Fraudulent Concealment" and "Conflict of Interest" required equitable relief from the proposed settlement in Herbst.

Judge Conner advised the parties that plaintiffs in Blecker should first seek relief in Herbst by objecting to the proposed settlement, and then he would entertain their motion for leave to file a second amended complaint.

The allegations referred to before Judge Conner arise cut of Lawson F. Bernstein being an attorney of re-

cord in Herbst at the time he brought a derivative suit on behalf of ITT alleging claims as to the secret profits, Bernstein v. Mediobanca, et al. ("Bernstein"), 73 Civ. 3549 (WCC) U.S. District Court, Southern District of New York (Exhibit B), and his purported withdrawal from Herbst to commence Bernstein (Exhibit C).

If Lawson F. Bernstein had complied with the Rules of this Court (Exhibit D), the Court would not have permitted him to withdraw from Herbst in order to bring Bernstein.

In view of the decision of the Board of Directors of ITT, that suit should not be brought on the claims contained in Bernstein, ITT and its directors had an obligation to oppose Lawson F. Bernstein's withdrawal from Herbst. Rather, as ITT's counsel stated in an affidavit in Blecker (Exhibit E), "the withdrawal was acquiesced in by all parties." ITT and its directors acquiesced in the withdrawal in order to conceal the plan and scheme alleged in Blecker.

Further, to conceal the plan and scheme alleged in Blecker ITT sought to stay Blecker in favor of Bernstein. Thereto, Lawson F. Bernstein submitted an affidavit (Exhibit F), intended to mislead the Court in the Southern District

of New York into believing that at the time of his withdrawal from Herbst his status was that of pre-trial counsel.

It is evident from his memo dated January 18, 1974 (Exhibit G) that Judge Tenney was misled:

> "The Court agrees with plaintiffs that if Mr. Bernstein (plaintiffs' counsel in Bernstein) represented the class action plaintiffs in Herbst as well as the derivative plaintiff in Bernstein, a serious question of conflict of interest would arise. [citation omitted] That situation does not, however, present itself in the instant case.
>
> Defendant ITT, in its papers in opposition to this motion, has informed the Court that Mr. Bernstein withdrew from the Herbst case on August 13, 1973, two days prior to the institution of the Bernstein action. (Exhibit C) Furthermore, Mr. Bernstein has submitted an affidavit at the request of the Court confirming ITT's representation."

Now that all of the pieces have fallen into place it is crystal clear that, after June 18, 1973 the day James O'Connor Shea moved to have Lawson F. Bernstein "represent the plaintiff, together with Silverman & Harnes, Esqs. and [himself], in all proceedings in [Herbst]" (Exhibit H) and the demand to bring Bernstein was served (Exhibit I), ITT and Lawson F. Bernstein were aware of each other's disabilities. Thereafter, they played the disabilities off against each other, and wrongfully induced the Court in the Southern District of New York to order Blecker stayed in favor of Bernstein.

Lawson F. Bernstein knew that ITT could not afford to have the plan and scheme uncovered by him in Herbst and alleged in Blecker become known. The IRS was investigating the ITT-Mediobanca transaction.

ITT and its counsel were aware -- the power to make corporate decisions residing in its Board of Directors -- that Bernstein was defenseless against a business judgment defense. ITT (Exhibit J) and Lazard Freres (Exhibit K) have asserted the business judgment defense in Bernstein. The question remains sub judice.

Neither that part of the Blecker amended complaint alleging the secret profits nor Bernstein are listed in paragraph 17 of the Stipulation of Settlement as actions whose dismissal will be sought on the basis of the releases to be delivered in the settlement at bar. Nor is it disclosed whether Lawson F. Bernstein is participating in the fees to be sought in Herbst.

Inasmuch as the proposed second amended complaint in Blecker alleges with particularity facts as to the participation and acquiescence of the management and directors of ITT in the transactions that produced the secret profits, that have come to plaintiffs' attention subsequent to the filing of the amended complaint in Blecker, it is not surprising that the would-be recipients of the releases to be

delivered in the settlement at bar have refused to agree that they will not plead their releases.

It does not require great imagination to visualize what the parties to the Stipulation of Settlement intend to do if the settlement at bar is approved. Dismissal of Blecker will be sought on the basis of the releases to be delivered. Bernstein will be allowed to founder on the business judgment defense. Lawson F. Bernstein will participate in the fees which may be awarded in Herbst. Such an end to the claims alleged in Blecker is not in the best interest of ITT and its shareholders.

After an evidentiary hearing the proposed settlement should be disapproved as an improvident use of ITT's resources, and, this Court should grant such other relief as it concludes is necessary. At the very least the releases to be delivered should specifically exclude Blecker from their operation.

Dated: New York, New York

May , 1976

Netter & Spiegel

By _____

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AMENDED COMPLAINT IN BLECKER ACTION, EXHIBIT A TO OBJECTIONS FILED IN HERBST BY BLECKERS (pp. A88-A101)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS BLECKER and RUTH BLECKER,

Plaintiffs,

against

LAZARD FRERES & CO., MEDIOBANCA BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., LAZARD FRERES ET CIE, INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, RICHARD E. BENNETT, EUGENE R. BLACK, RAYMOND L. BRITTENHAM, GEORGE R. BROWN, FRANCIS J. DUNLEAVY, RUSSELL F. ERICKSON, HAROLD S. GENEEN, ARTHUR M. HILL, J. PATRICK LANNAN, R. NEWTON LAUGHLIN, JOHN A. McCONE, RICHARD S. PERKINS, HART PERRY, WARREN LEE PIERSON, FELIX G. ROHATYN, and TED B. WESTFALL.

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73 Civ. 4057 (WCC)

AMENDED COMPLAINT

Plaintiffs, by their attorneys, Netter & Spiegel, complaining of the defendants, alleged upon information and belief, except as to ¶ 2 whichis alleged upon knowledge:

JURISDICTION

1. (a) Jurisdiction of this action is based upon Section 27 of the Securities Exchange Act of 1934 (U.S.C.A 78(a) et seq.); and Section 22(a) of the Securities Act of 1933 (15 U.S.C.A 77 v(a)) and to the extent that legal theories of relief based upon state law may be found to be applicable, upon the pendent jurisdiction of this Court;

(b) This action is based upon violations of §10(b) of the Securities Exchange Act of 1934 [15 U.S.C.A. 78 J (b)] and Rule 10 b-5 of the rules promulgated by the Securities and Exchange Commission thereunder (17 C.F.R. 240, 10 (b)-5); §17(a) of the Securities Act of 1933 [15 U.S.C.A. 77 q(a)]; and the common law;

(c) This action is not brought collusively to give the court jurisdiction of an action it would not otherwise have.

2. Plaintiffs are stockholders of INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION ("ITT") and were stockholders at the times of the violations complained of. They presently own 850 shares of the common stock of ITT.

3. Plaintiffs bring this action derivatively on behalf of ITT.

DEFENDANTS

4. ITT is a Delaware corporation with its principal place of business at 320 Park Avenue, New York, New York.

5. LAZARD FRERES & CO. ("Lazard-NY") is a partnership organized and existing under the laws of the State of New York with principal places of business at 44 Wall Street and One Rockefeller Plaza, New York, New York.

6. MEDIOBANCA BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI ("Mediobanca") is a limited company established under the laws of Italy with offices at 10 via Filodrammatici, Milan, Italy.

7. LES FILS DREYFUS ET CIE, S.A. ("Dreyfus") is a corporation established under the laws of Switzerland, with its principal place of business at 14-16 Aeschenvorstadt, Basel, Switzerland.

8. LAZARD FRERES ET CIE ("Lazard-Paris") is a partnership established under the laws of France, its provinces and prefectures, with its principal place of business at 5 rue Pilet-Will, Paris, France.

9. At the times of the acts complained of, and as of May 26, 1970, FELIX G. ROHAYTYN was an officer and partner of Lazard-NY.

10. At the time of the acts complained of and as of May 26, 1970, the following defendants were directors of ITT:

Name	Office
Richard E. Bennett	Executive Vice President & Director
Eugene R. Black	Director
Raymond L. Brittenham	Sr. Vice President-Law and Counsel and Director
George R. Brown	Director
Francis J Dunleavy	Executive Vice President & Director
Russell F. Erickson	Director
Harold S. Geneen	Chairman, President & Director
Arthur M. Hill	Director
J. Patrick Lannan	Director
R. Newton Laughlin	Director
John A. McCone	Director
Richard S. Perkins	Director
Hart Perry	Executive Vice Pres.-Finance & Director
Warren Lee Pierson	Director
Felix G. Rohatyn	Director
Ted B. Westfall	Executive Vice President & Director

11. Commencing in or about October 1969, the defendants, or some of them, other than ITT, entered into a plan, scheme and conspiracy to benefit themselves or some of them at the expense of ITT, such plan having been developed as a result of the knowledge of the defendants that ITT might have to divest itself of its holdings of the common stock ("SHARES") of The Hartford Fire Insurance Company ("Hartford").

12. In pursuance of such plan, scheme and conspiracy, the aforementioned defendants, or some of them, participated in arranging for ITT and Mediobanca to enter into a written contract dated November 3, 1969 to effect the disposition of the SHARES.

13. In pursuance of such plan, scheme and conspiracy the defendants or some of them, fraudulently concealed from any public source a separate agreement dated November 3, 1969 between Mediobanca and Lazard-NY for the disposition of the SHARES. Plaintiffs could not have become aware of this agreement until at least some time in May of 1973.

14. In pursuance of such plan, scheme and conspiracy the defendants, or some of them, caused false information to be submitted to the Internal Revenue Service ("IRS") as to the contract to be entered into between Mediobanca and ITT for the disposition of the SHARES.

15. In pursuance of such plan, scheme and conspiracy, the defendants, or some of them, concealed information from tax counsel for ITT and Hartford, said tax counsel being unaware until some time after May 26, 1970 of the existence of the separate agreement between Mediobanca and Lazard-NY for the disposition of the SHARES.

INTERNAL REVENUE SERVICE

16. In 1968 and 1969, ITT purchased approximately 1.7 million shares of the common stock of Hartford. In April of 1969, ITT and Hartford agreed upon a plan of merger. The merger plan was conditioned upon the parties and their shareholders not incurring any tax liability. Hartford sought a ruling from IRS that the merger would result in no gain or loss for federal income tax purposes.

17. On October 13, 1969, IRS issued a ruling that the merger would be a non-taxable event to the parties and their shareholders if ITT disposed of its holdings of the SHARES prior to the approval of the merger proposal by the Hartford shareholders.

18. On October 14, 1969, ITT requested a supplemental ruling from the IRS, that the sale of the SHARES pursuant to a proposed contract of sale with Mediobanca would meet the conditions imposed in the IRS ruling of October 13, 1969.

19. On October 21, 1969, the IRS issued a ruling that the proposed sale by ITT of the SHARES to Mediobanca would constitute an unconditional disposal of the SHARES for the purpose of its ruling of October 13, 1969.

20. On or about March 6, 1974, the IRS revoked its ruling of October 21, 1969.

MEDIOBANCA-LAZARD-NY

21. On November 3, 1969, Mediobanca, acting on behalf of a syndicate, entered into a contract with ITT ("Contract") which provided, at Mediobanca's option, alternative ways for determining the price ITT would receive for the SHARES or their equivalents:

(i) Market price on date of closingor $51 per share, whichever was higher;

(ii) An amount equal to (a) the fair market value of the SHARES determined by Lazard-NY for the two week period ending May 31, 1971 plus (b) the amount of dividends paid on such shares from the closing date to June 10, 1971; or

(iii) An amount equal to (a) the proceeds received by Mediobanca from the sale of the SHARES or their equivalents to third parties in an arms-length transaction plus (b) the amount of any dividends declared prior to the date of sale less (c) the amount of any agreed upon fees.

The terms of the contract further provided that its provisions were applicable to any other securities received in exchange for the SHARES in any merger or reorganization. The terms of the contract also recited that Mediobanca was acting on behalf of a syndicate ("Syndicate").

22. On the same day the contract was entered into, Mediobanca notified ITT that it had elected the second and third alternatives.

23. As a condition to the contract, ITT was required to pay, and did pay to Mediobanca, a commitment fee of approximately $1.3 million. In addition, in the event that Mediobanca sold the SHARES to third parties in arms-length transactions subsequent to June 30, 1970, Mediobanca was to receive $.255 per share as a fee, which fee would be increased to $.51 per share if Mediobanca sold the SHARES subsequent to December 1970.

24. On or about November 3, 1969, Mediobanca and Lazard-NY entered into a separate written agreement providing, among other things that:

(a) Mediobanca and Lazard-NY would share equally in any profits realized by Mediobanca under its agreement with ITT;

(b) Lazard-NY was to sell the SHARES in such amounts and at such times as it deemed advisable.

25. On November 6, 1969, ITT delivered to Lazard-NY, its irrevocable proxy in favor of Lazard-NY to vote the SHARES at a Special Meeting of Stockholders of Hartford to be held on November 10, 1969, subject to the closing of the Contract.

26. In a letter dated November 6, 1969, ITT indemnified and held Lazard-NY and any of its partners harmless against any liability which might arise under the Contract.

27. On November 9, 1969, the closing under the Contract was held at Dreyfus' offices in Basel. At the closing ITT delivered the SHARES to Lazard-NY, who, by THOMAS F.X. MULLARKEY acknowledged receipt thereof.

28. The proposed merger was rejected by the Insurance Commissioner of Connecticut. Thereafter, in December of 1970 ITT proposed an exchange offer pursuant to which it offered to exchange one share of ITT Convertible Series N Preferred Stock ("N") for each outstanding share of Hartford, which offer was approved by the Insurance Commissioner of the State of Connecticut.

29. Thereafter, on May 26, 1970, ITT made such an exchange offer ("Offer") and acquired more than 95% of the outstanding stock of Hartford, including the SHARES. The Offer was false and misleading.

30. The officers and directors of ITT knew or should have known that the description of the Mediobanca transaction on pages 15 and 16 of the Offer was materially false and misleading in that no sale of the SHARES pursuant to the Contract had been effected.

31. The officers and directors of ITT knew or should have known that the description of the Mediobanca transaction on pages 15 and 16 of the Offer was materially false and misleading in that it failed to spell out theroles of Lazard-NY and Dreyfus.

32. The officers and directors of ITT knew or should have known that the description of the Federal Tax Consequences on page 6 of the Offer was materially false and misleading in that no sale of the SHARES pursuant to the Contract had been effected.

33. The officers and directors of ITT knew or should have known that the description of the compensation of Lazard-NY for services on page 23 of the Offer was materially false and misleading in that Lazard-NY was not an independent banker, but a partner with Mediobanca pursuant to the agreement referred to in paragraph 24 herein.

MEDIOBANCA-DREYFUS & I.I.A.

34. In June of 1970, the N shares began to trade on the New York Stock Exchange.

35. In December 1970, Mediobanca, on behalf of the Syndicate, entered into two agreements to sell the N shares:

(a) An agreement, dated December 15, 1970, with Dreyfus, granting it an option to May 1, 1971 to purchase 100,000 shares of N at a price of $55 per share. The agreement did not obligate Dreyfus to purchase such shares.

(b) An agreement, dated December 15, 1970, with International Investment Associates ("I.I.A.") under which I.I.A. was granted an option to May 1, 1971 to purchase 400,000 shares of N at a price of $55 per share. The agreement did not obligate I.I.A. to purchase such shares.

36. Neither I.I.A. nor Dreyfus made any payment to ITT or Mediobanca for the options granted to them.

37. At the time Mediobanca, on behalf of the Syndicate, entered into the agreements with Dreyfus and I.I.A. referred to in ¶ 35 herein:

(a) The President of I.I.A., Jean Guyot, was a partner in Lazard-Paris and a member of the Board of Directors of Mediobanca;

(b) Michel David-Weill, a partner in Lazard-Paris, was a member of the Board of Directors of I.I.A.;

(c) Pierre David-Weill, a partner in Lazard-Paris, was also a partner in Lazard-NY;

(d) Andre Mayer, a partner in Lazard-Paris, was also a partner in Lazard-NY;

(e) Lazard-NY was a participant in the Syndicate;

(f) Dreyfus was a participant in the Syndicate; and

(g) Dreyfus was controlled by Lazard-NY.

38. When the I.I.A. and Dreyfus agreements were entered into, the market price of N on the New York Stock Exchange was approximately $60 per share.

39. Between March 29, 1971 and March 31, 1971, the sale of 100,000 of the N shares to Dreyfus at $55 per share pursuant to the Dreyfus agreement was effected.

40. Between March 29, 1971 and March 31, 1971, the market price of N was approximately $73 per share.

41. In a letter dated April 27, 1971, Mediobanca confirmed to ITT that it had agreed with I.I.A. to extend from May 1, 1971 to May 25, 1971 the period of time during which I.I.A. would have the right to purchase 400,000 N shares at $55 per share under the I.I.A. agreement. No compensation was given to ITT for this extension.

42. Between May 26, 1971 and May 28, 1971, the sale of 400,000 N shares to I.I.A. at $55 per share pursuant to the I.I.A. agreement was effected.

43. Between May 26, 1971 and May 28, 1971, the market price of N ranged between $77 and $80 per share.

44. The Syndicate led ITT to believe that the Dreyfus and I.I.A. agreements conformed to the provisions of its agreement with Mediobanca.

45. The Syndicate knew, or should have known, that the purchase by Dreyfus of 100,000 N shares pursuant to the agreement referred to in ¶ 35(a) herein could only cause a diminution in the amounts received by ITT under its agreement with Mediobanca.

46. The Syndicate knew or should have known that the sale of 400,000 N shares to I.I.A. pursuant to the agreement referred to in ¶ 35(b) herein could only cause a diminution in the amounts received by ITT under its contract with Mediobanca.

47. As a result of the acts and violations by the Syndicate with respect to the sale of the N shares ITT and its shareholders have sustained damage in an amount presently unascertainable but at least in excess of $10,000,000.

ITT-HERBST

48. In 1972 a Class action was commenced against ITT and Lazard-NY, and others, by a former Hartford shareholder (Hilda Herbst v. ITT et al, Civ. 15,555 United States District Court, District of Connecticut) asking as a part of the relief sought that ITT bear the total tax liability that might be imposed upon former Hartford shareholders as a result of their acceptance of the Offer.

49. Upon being notified that IRS had revoked its ruling of October 21, 1969, on or about March 7, 1974, ITT issued a statement which said in part that "...we will reimburse Hartford shareholders for any net tax they may incur as a result of the IRS action. This reimbursement program, based on a preliminary analysis, might amount to amount $35 million..."

50. Defendants knew or should have known that the submission of false or misleading information to the IRS could lead to the revocation of the IRS ruling of October 21, 1969, to the detriment of ITT and its shareholders.

51. Defendants knew or should have known that the revocation of the IRS ruling of October 21, 1969 would lead to claims against ITT by former Hartford shareholders, to the detriment of ITT and its shareholders.

52. As a result of the acts and violations by the defendants which resulted in the revocation of the IRS ruling of October 21, 1969, ITT and its shareholders have sustained damage in an amount presently unascertainable but at least in excess of $35,000,000.

CONCLUSION

53. In the course of the plan, scheme and conspiracy set forth in the preceeding paragraphs the defendants other than ITT, and others presently unknown, individually, jointly and in concert, directly and indirectly, used the mails, and the instruments of transportation and communication in interstate commerce and the means and instrumentalities of interstate commerce in the offer and/or sale of securities and in connection with the purchase and sale of securities, and in so doing made untrue statements of material fact and omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and engaged in acts, practices and a course of business which operated as a fraud and deceit on ITT and its public stockholders, as a seller of securities or in connection with the purchase and sale of securities in violation of §10-(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78 j (b), and Rule 10 (b)-5 thereunder, 17 C.F.R. 240, 10 b-5, and §17(a) of the Securities Act of 1933, 15 U.S.C. 77 q(a).

54. All or a substantial part of the acts or transactions herein referred to occurred within the Southern District of New York.

55. Plaintiffs have made no demand upon ITT or its Board of Directors to bring this action. Such demand would be futile and unavailing in that the Board of Directors has refused to take action thereon despite the fact that they have known about the acts complained of herein. The Board of Directors are named as defendants in this action.

56. Demand on the stockholders of ITT to bring this action was not made and would have been futile and unnecessary because:

(a) The wrongs complained of herein are incapable of stockholder ratification.

(b) Under the law, the management of ITT affairs is entrusted to its directors not its stockholders.

(c) To secure action from the stockholders of ITT would require a proxy contest. The directors of ITT control its proxy machinery and the use of its money to prepare and mail proxy material and solicit stockholders' votes. They would oppose plaintiffs in such a proxy contest. A proxy contest financed by plaintiffs would entail prohibitive expenses to plaintiffs as well as taking so much time as to be an unreasonable burden to plaintiffs.

WHEREFORE, plaintiffs demand judgment as follows:

A. Requiring Dreyfus to account to ITT for all illegal and improper profits realized by it.

B. Requiring Lazard-NY to account to ITT for all illegal and improper profits realized by it.

C. Requiring Lazard-Paris to account to ITT for all illegal and improper profits realized by it.

D. Requiring defendant Mediobanca to account to ITT for all illegal and improper profits realized by it.

E. Requiring all defendants other than ITT to account to ITT for all losses sustained by ITT as a result of the improper and illegal transactions alleged herein.

F. For punitive damages against all defendants other than ITT and its officers and directors in their capacity as such, in the sum of $5,000,000.

G. Awarding the plaintiffs the costs and disbursements of this action, including reasonable counsel and accountant's fees.

H. Granting plaintiffs such other and further relief as may be just and proper.

NETTER & SPIEGEL
Attorneys for Plaintiffs
Office and P.O. Address
18 East 48th Street
New York, New York 10017
212- 752-3122

By Mathias L. Spiegel

Mathias L. Spiegel
A Member of the Firm

MOTION AND ORDER IN HERBST ACTION, SIGNED JUNE 26, 1973 PERMITTING LAWSON F. BERNSTEIN TO REPRESENT HILDA HERBST, EXHIBIT B TO OBJECTIONS FILED IN HERBST BY BLECKERS (pp. A102-A103)

FILED
JUN 12 8 43 AM '73
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HILDA HERBST,

Plaintiff,

-against-

INTERNATIONAL TELEPHONE and TELEGRAPH CORPORATION, et al

Defendants.

Civil Action No. 15155

Motion to Permit Lawson F. Bernstein to Represent the Plaintiff, Hilda Herbst

1. It is respectfully moved that Lawson F. Bernstein be permitted to represent the plaintiff, together with Silverman & Harnes, Esqs. and the undersigned, in all proceedings in the above entitled matter.

2. Lawson F. Bernstein's office address is 110 East 59th Street, New York, New York 10022.

3. Lawson F. Bernstein is a member of the Bars of the United States Supreme Court, the United States Court of Appeals for the Second Circuit, and the United States District Courts for both the Southern and Eastern Districts of New York. He is also a member of the Bar in the State of New York.

4. Lawson F. Bernstein does not appear on a list of lawyers disqualified to appear in this Court.

JUN 27 1973
NEW HAVEN

U.S. DISTRICT COURT
NEW HAVEN, CONN.

James O'Connor Shea
900 Chapel Street
New Haven, Connecticut

This is to certify that on the 14th day of June, 1973, a copy of Motion to Permit Lawson F. Bernstein to Represent the Plaintiff, Hilda Herbst, was mailed via U. S. Mail, Postage Prepaid to: Joseph P. Cooney, Esq., Cooney and Scully, 226 Pearl Street Hartford, Connecticut and John Q. Tilson, Jr., Esq., Wiggin & Dana, 205 Church Street, New Haven, Connecticut.

Dated this 14th day of June, 1973.

By James O'Connor Shea
Attorney

I hereby certify that the foregoing is a true copy of the original document on file. Date: 6/25/74

SYLVESTER A. MARKOWSKI
Clerk

By: Francis J. Longo
Deputy In Charge

LETTER DATED AUGUST 15, 1973 FROM LAWSON F. BERNSTEIN TO JUDGE BLUMENFELD, EXHIBIT C TO OBJECTIONS FILED IN HERBST BY BLECKERS

NEW YORK, N.Y. 10022

421-9300
AREA CODE 212

LAWSON F. BERNSTEIN
HAROLD B. OBSTFELD

August 15, 1973

The Honorable M. Joseph Blumenfeld
Chief Judge
United States District Court
District of Connecticut
Federal Courthouse
Hartford, Connecticut 06103

Re: Herbst v. ITT, et al
Civil No. 15,155

Honorable Sir:

I wish to inform the Court that, effective August 13, 1973, I have withdrawn as plaintiff's pre-trial counsel in this action for the reasons which I set forth in my June 26, 1973 letter to the Secretary of International Telephone & Telegraph Corporation (copies of which were distributed to its directors, who are the defendants in this action). A copy of my June 26th letter is attached hereto as Exhibit "A".

This withdrawal has been confirmed to Sidney B. Silverman, of Silverman & Harnes, by my letter to him dated August 13, 1973, a copy of which is attached hereto as Exhibit "B".

On August 21, 1973 I shall be present in Your Honor's courtroom, at the time of the argument of plaintiff's motion to compel Lazard Freres & Co., a witness, to produce certain documents, no longer as plaintiff's pre-trial counsel but only in order to be available to answer any questions which Your Honor may wish to put to me.

Respectfully,

Lawson F. Bernstein

LFB:bcl
cc: All Counsel
Enclosures

LETTER DATED JUNE 26, 1973 FROM LAWSON F. BERNSTEIN TO JOHN J. NAVIN, VICE PRESIDENT OF ITT, EXHIBIT C TO OBJECTIONS FILED IN HERBST BY BLECKERS

June 26, 1973

Mr. John J. Navin, Vice President
and Corporate Secretary
International Telephone and Telegraph Corporation
320 Park Avenue
New York, New York 10022

Dear Mr. Navin:

This letter supplements my previous communications to you dated June 18 and 22, 1973.

If the ITT Board of Directors chooses to have my client institute the action that is the subject of my June 18 letter and the proposed complaint enclosed therewith, it is my intention that, prior to the actual commencement of the action, I shall withdraw as pre-trial counsel for the plaintiff in the action pending in the United States District Court for the District of Connecticut entitled "Hilda Herbst, Plaintiff, V. International Telephone and Telegraph Corporation, et al, Defendants, Civil No. 15,155," in order to avert any possible conflict in respect of my professional obligations.

Sufficient copies of this letter are enclosed for the members of the ITT Board. It is requested thay you distribute them expeditiously.

Thanking you in advance for your courtesy, I remain,

Very truly yours,

Lawson F. Bernstein

LFB:bel

LETTER DATED AUGUST 13, 1973 FROM LAWSON F. BERNSTEIN TO SIDNEY B. SILVERMAN, EXHIBIT C TO OBJECTIONS FILED IN HERBST BY BLECKERS

August 13, 1973

Sidney B. Silverman, Esq.
Silverman & Harnes
One Rockefeller Plaza
New York, New York 10020

Re: Herbst V. ITT, et al

Dear Mr. Silverman:

As I shall soon commence an action on behalf of a client--suing derivatively as an ITT stockholder--against ITT, Mediobanca, Lazard Freres & Co., Lazard Freres et Cie, and Les Fils Dreyfus. S. A., the possibility of the conflict of professional obligations which I foretold in my June 26, 1973 letter to the Secretary of ITT now arises. As I told you today, I am resolving that conflict by withdrawing, effective today, as plaintiff"s pre-trial counsel in Herbst V. ITT, et al.

I shall deliver all of my Herbst documents to you later this week at your convenience.

Sincerely,

Lawson F. Bernstein

LFB:bel
cc: James O"Connor Shea, Esq.

LOCAL RULE 14, DISTRICT OF CONNECTICUT, EXHIBIT D TO OBJECTIONS FILED IN HERBST BY BLECKERS

may be disposed of as the court shall order. All exhibits remaining in the file after a period of six months from the date of the final determination of any case, may be disposed of by the clerk without notice to any party. It shall be the responsibility of any party having exhibits of value on file to make provision for their protection.

RULE 14 — WITHDRAWAL OF APPEARANCES

Withdrawal of appearances may be accomplished only by leave of court on motion duly noticed.

RULE 15 — PREMIUMS ON BONDS AS TAXABLE COSTS

Premiums paid upon all bonds provided pursuant to statute, rule of court, order of court, stipulation of parties, including bonds in lieu of or in release of attachment, may be taxed as costs to the prevailing party, subject to disallowance entirely or in part by the court in its discretion.

RULE 16 — DISMISSAL OF ACTIONS FOR FAILURE TO PROSECUTE

In civil actions in which no action has been taken by the parties for one year, the clerk shall give notice of proposed dismissal to counsel of record, on or before the first of September in each year. If such notice has been given and no action has been taken in any civil action in the meantime and no satisfactory explanation is submitted to the court within thirty days thereafter, the clerk shall enter an order of dismissal. Any such order entered by the clerk under this rule may be suspended, altered, or rescinded by the court for cause shown.

RULE 17 — TRANSFER OF CASES TO ANOTHER DISTRICT OR UPON REMAND TO A STATE COURT

In a case ordered transferred to another District Court or remanded to the appropriate State Court, the clerk shall mail forthwith to the court to which the case is transferred or remanded (1) a certified copy of the court's opinion directing such action, and its order thereon, and of the docket entries, and (2) the original of all pleadings and other papers on file in the case.

RULE 18 — ENTRY OF ORDERS AND JUDGMENTS

(a) *By the Court.* A memorandum signed by the Judge

AFFIDAVIT OF JOHN H. SCHAFER, SWORN TO DECEMBER 20, 1973, EXHIBIT E TO OBJECTIONS FILED IN HERBST BY BLECKERS (pp. A108-A109)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS BLECKER and RUTH BLECKER,

Plaintiffs,

v.

LAZARD FRERES & CO., MEDIOBANCA BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., LAZARD FRERES ET CIE and INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION,

Defendants.

73 Civ. 4057 (CHT)

AFFIDAVIT

DISTRICT OF COLUMBIA ss:

John H. Schafer, being duly sworn, deposes and says:

1. I am a member of the bar of the Supreme Court of the United States, of the Second Circuit Court of Appeals, and various other federal courts. I am counsel for International Telephone and Telegraph Corporation (ITT) in this action as well as in the action entitled Bernstein v. Mediobanca, et al., 73 Civ. 3549, and in Herbst v. ITT, et al., Civil No. 15,155 pending in the United States District Court for the District of Connecticut. I file this affidavit in support of ITT's opposition to reargument or reconsideration of this Court's ruling dated December 10, 1973, and in opposition to certification of that ruling under 28 U.S.C. § 1292(b).

2. Attached to this affidavit is a copy of a letter I received August 16, 1973 from Lawson F. Bernstein, Esq., to the Honorable M. Joseph Blumenfeld, the Judge to whom Herbst v. ITT, et al. has been assigned. By this letter

Mr. Bernstein informed Judge Blumenfeld that he was withdrawing from Herbst v. ITT, et al. This withdrawal was acquiesced in by all parties, and since the date of this letter there is no evidence whatever that Mr. Bernstein has continued to participate in the Herbst litigation.

3. I have been informed both by Mr. Silverman, counsel for Mrs. Herbst in the Herbst litigation and by Mr. Bernstein, that all documents produced in the Herbst litigation that were in the possession of Mr. Bernstein have been turned over to Mr. Silverman. I have, myself, seen in Mr. Silverman's office a large box full of these documents, and have no reason to believe that the representation made to me that all have been turned over by Mr. Bernstein to Mr. Silverman is not true.

John H. Schafer

Sworn and subscribed to before
me this 20th day of December,
1973.

Notary Public
My Commission Expires Feb. 14, 1974

AFFIDAVIT OF LAWSON F. BERNSTEIN, SWORN TO JANUARY 16, 1974, EXHIBIT F TO OBJECTIONS FILED IN HERBST BY BLECKERS (pp. A110-A115)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS BLECKER and RUTH BLECKER,

Plaintiffs,

-against-

LAZARD FRERES & CO., MEDIOBANCA BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., LAZARD FRERES ET CIE and INTERNATIONAL TELEPHONE and TELEGRAPH CORPORATION

Defendants.

73 Civ. 4057 (CHT)

AFFIDAVIT OF LAWSON F. BERNSTEIN

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

LAWSON F. BERNSTEIN, being duly sworn, deposes and says that:

1. John H. Schafer, III, Esq., counsel for International Telephone and Telegraph Corporation ("ITT"), sent me copies of the Court's decision in the above action, dated December 10, 1973, which granted the defendant International Telephone and Telegraph Corporation's motion to stay the above action, and of the moving and opposing papers on the reconsideration motion filed by the attorneys for the plaintiff in the above action.

2. As the attorney for the plaintiff in the action before this court entitled " Benjamin Bernstein, Plaintiff, v. Mediobanca Banca di Credito Finanziario-Societa Per Azioni, Les Fils Dreyfus et Cie, S.A., Lazard Freres & Co., Lazard Freres et Cie and International Telephone and Telegraph Corporation, Defendants" (File No. 73 Civ. 3549, CHT), filed prior to the commencement of the above action, I ask this Court to receive this affidavit as my response to the allegations concerning me which were made by Mathias L. Spiegel, Esq., one of the attorneys in the above Blecker action, in his reconsideration moving affidavit and memorandum.

3. Mr. Spiegel charges that I am still active in Herbst v. ITT, Civ. 15,550 (U.S.D.C., D.Conn.) and that, based upon that premise (which is false), my representation of the plaintiff in the Bernstein action involves a conflict of interest which "may very well violate the Canons of Ethics". He also suggests (p. 3 of his memorandum of law) that "If there have been settlement discussions between the parties this may account for the vigor of defendant ITT's effort to keep counsel in Blecker from pursuing its derivative action."

4. I shall deal with these allegations and that insinuation seriatim.

5. I confirm, as stated in paragraphs "2" and "3" of Mr. Schafer's December 20, 1973 opposing affidavit, that:

(a) I withdrew as pre-trial counsel to plaintiff's attorneys in the Herbst action effective August 13, 1973. To that end I sent Chief Judge Blumenfeld a

withdrawal letter on August 15, 1973; Mr. Schafer has attached a copy of it to his affidavit, together with, as Exhibit "A" thereto, a copy of my June 26, 1973 letter to the Corporate Secretary of ITT (in which I stated my intention to withdraw from Herbst "If the ITT Board of Directors chooses to have my client institute the action" which is now Bernstein v. Mediobanca, et al, "in order to avoid any conflict in respect of my professional obligations") and, as Exhibit "B" thereto, a copy of my letter to Sidney B. Silverman, Esq., plaintiff's attorney in Herbst, confirming my withdrawal on August 13, 1973 as plaintiff's pre-trial counsel therein),

(b) My withdrawal was acquiesced in by all parties in Herbst. Since the effective date of my August 15, 1973 letter I have not participated in any way in the Herbst litigation, and

(c) I have long since turned over to Sidney B. Silverman, Esq. all documents produced in the Herbst litigation that were in my possession.

6. Thus, Mr. Spiegel's contention that I am active to any degree in the Herbst action is completely without foundation in fact, and that has been so since August 13, 1973. Accordingly, his conflict of interest allegations are completely without merit.

7. Up to the time of my withdrawal as pre-trial counsel in Herbst there had not been any settlement discussions.

This can be corroborated by Mr. Schafer. And I do not have any knowledge one way or the other that there have been any such since that time. Mr. Schafer can corroborate this, too.

8. Therefore, for Mr. Spiegel to attempt to infer in his memorandum of law that some sort of collusive settlement activities might be motivating "ITT's effort to keep counsel in Blecker from pursuing that action" is a professional slander against me and other attorneys which Mr. Spiegel could and should have avoided by first addressing to Mr. Schafer and me questions as to whether or not there had ever been discussions of settlement in the Herbst action and, if there had been, whether or not I had participated in them.

9. Although Mr. Spiegel puts on one face to this Court he has put on a different one to me. He urges the Court that I am unfit to conduct the Bernstein action because of the alleged taint of conflict of interest, but he urges me, alleged taint notwithstanding, to be his collaborator.

10. On November 30, 1973 -- commenting on my November 28, 1973 letter to your Honor (copies of which were sent to all counsel in the Blecker action) -- Mr. Spiegel wrote to me as follows:

> "I have your epistle to Judge Tenney dated November 28, 1973. My observations which you complain about, do not express any opinion as to your competence or experience; I have no such knowledge.
>
> "I have stated to the Court that in large and complex litigation a single practitioner appearing alone is at

a disadvantage; that you are a single practitioner. I have no reason to modify these statements.

"If my statements have offended you, no offense was intended. It would be more profitable, however, to discard diatribe and polemic, and for us to work together positively on behalf of our clients, shareholders in International Telephone & Telegraph Corporation. In this regard, you have our cooperation if that be your wish." (The underlining has been added by me.)

A copy of that letter is attached hereto as Exhibit "A". I did not respond to it in any way.

11. Mr. Spiegel made no mention in that letter of his charge of a potential conflict of interest on my part. Rather, his letter is an expression of his desire to "work together" with me. I should think that a lawyer who seriously charges another lawyer with a conflict of interest would be made of sterner stuff. It is clear that Mr. Spiegel and his partner want "in" on the Bernstein action and that, because of their desire to accomplish that end, Mr. Spiegel has played both the Court and me false, by making charges to the Court of unfounded conflict of interest on my part, on the one hand, and by transparent blandishments to me, on the other.

12. I wish to report that discovery is moving ahead in the Bernstein action. On January 11, 1973 I caused to be served upon the attorneys for the defendants therein notice of plaintiff Bernstein's motion (with a moving affidavit and a

memorandum of law) to compel all of the defendants therein to comply with the plaintiff's discovery requests and to compel the three foreign defendants therein -- Mediobanca Banca di Credito Finanziario-Societa Per Azioni, Les Fils Dreyfus et [illegible], S.A., and Lazard Freres et Cie -- to answer plaintiff's interrogatories. That motion is returnable before this Court on January 24, 1974 at 10 A.M. The original motion papers were filed, with proof of service, in the Clerk's office on Tuesday, January 15,

Lawson F. Bernstein

Sworn to before me this
16th day of January, 1974.

Notary Public

LETTER DATED JUNE 18, 1973, WITHOUT ENCLOSURE, FROM LAWSON F. BERNSTEIN TO JOHN J. NAVIN, VICE PRESIDENT OF ITT, EXHIBIT I TO OBJECTIONS FILED IN HERBST BY BLECKERS (pp. A116-A117) A116

LAWSON F. BERNSTEIN
110 EAST 59TH STREET
NEW YORK, N.Y. 10022

June 18, 1973
BY HAND

Mr. John J. Navin, Secretary
International Telephone and Telegraph Corporation
320 Park Avenue
New York, New York 10022

Dear Mr. Navin:

I am the attorney for Benjamin Bernstein, a shareholder of International Telephone and Telegraph Corporation (ITT). I have been retained by him to commence a derivative action on behalf of ITT. The basis of the action is set forth in the proposed complaint submitted herewith.

I request that you transmit a copy of this letter and a copy of the proposed complaint to each of the ITT directors in advance of the next Board of Directors meeting. I further request that at such next meeting ITT's directors consider whether (a) ITT will bring the proposed action in its own right and name as the party-plaintiff, or (b) the directors will vote to permit the plaintiff to pursue the proposed action on behalf of ITT. (I believe that copies of all documents relevant to the proposed complaint are in the possession of the various counsel who now represent, and have heretofore represented, ITT in actions and proceedings related to the subject matter of the proposed complaint.)

If the latter alternative is selected I have agreed to undertake the representation of the plaintiff (and, necessarily, that of ITT) on a strictly contingent basis -- namely, that any fee paid to me shall be based upon a percentage of the amount recovered by ITT. Any such fee is to be determined by the Court having jurisdiction of the action.

I have advised my client that unless it should develop that an ITT director personally profited from the wrongful transactions set forth in the complaint, none of the directors will be named in the complaint or served with process in this action.

In order to expedite this request I am enclosing sufficient copies of this letter and the proposed complaint to

A117

be distributed by you to each of ITT's directors, which I request be done without delay. I shall appreciate it if you will inform me (a) now, as to the date and time when the next scheduled meeting of ITT's Board of Directors will be held, (b) when distributed, the date on which this letter and proposed complaint will have been distributed to the Board and (c) when taken, the Board's action on this letter and the proposed complaint.

This letter and the described enclosures are being delivered by hand to your office.

Very truly yours,

Lawson F. Bernstein

Lawson F. Bernstein

LFB:bcl
Enclosures

NOTICE OF MOTION OF ITT FOR SUMMARY JUDGMENT IN BERNSTEIN V. MEDIOBANCA ET AL., 73 CIV. 3549 (WCC), EXHIBIT J TO OBJECTIONS FILED IN HERBST BY BLECKERS (pp.A118-A119)

Appeared
Filed 4-22-75
Issued (M) 4-21-75
Returned
Entered
Docketed ✓
Examined

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BENJAMIN BERNSTEIN,

Plaintiff,

-against-

MEDIOBANCA BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., LAZARD FRERES & CO., LAZARD FRERES ET CIE., and INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION,

Defendants.

NOTICE OF MOTION

73 Civ. 3549 (WCC)

SIRS:

PLEASE TAKE NOTICE that upon the annexed Statement Pursuant to Rule 9(g), the annexed affidavit of John J. Navin, Esq., sworn to April 17, 1975, the pleadings and all prior proceedings herein, the undersigned will move this Court on May 5, 1975, at 10:00 o'clock A.M. at the United States Courthouse, Foley Square, New York, New York for an order pursuant to Rule 56, Federal Rules of Civil Procedure, granting summary judgment in this action for defendant International Telephone

and Telegraph Corporation, dismissing the complaint, and granting such other and further relief as is just.

Dated: April 21, 1975

LAWRENCE M. McKENNA
Wormser, Kiely, Alessandroni
& McCann
100 Park Avenue
New York, New York 10017
Attorney for Defendant
International Telephone
and Telegraph Corporation

Of Counsel:

JOHN H. SCHAFER
Covington & Burling
888 16th Street, N.W.
Washington, D.C. 20006

EXCERPTS OF MINUTES OF ITT DIRECTORS MEETING HELD JULY 11, 1973, ANNEXED TO EXHIBIT J TO OBJECTIONS FILED IN HERBST BY BLECKERS (pp. A120-A122)

The 817th meeting (Regular) of the Board of Directors of INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, was held pursuant to notice, at the office of the Corporation, No. 320 Park Avenue, Borough of Manhattan, City and State of New York, on Wednesday, July 11, 1973.

Present: Messrs. Bennett, Black, Brittenham, Brown, Day, Dunleavy, Elfers, Friedman, Geneen, Lannan, Laughlin, Lester, McCone, Perkins, Rohatyn, Schoen, Westfall and Williams. Present by invitation were Messrs. Brokaw, Albel and Hamilton.

Harold S. Geneen, Chairman, presided at the meeting and John J. Navin, Secretary, kept the minutes thereof.

Mr. Samuel E. Gates of Debevoise, Plimpton, Lyons & Gates was then asked to join the meeting. Mr. Albel reported that on June 18, 1973 the Corporation had received a letter from a Mr. Lawson F. Bernstein, attorney for an ITT shareholder (Mr. Benjamin Bernstein) enclosing a proposed complaint initiating a derivative action on behalf of ITT against

Mediobanca, Lazard Freres & Co. and others for the recovery of profits allegedly illegally obtained by Lazard Freres & Co. and others in connection with the disposition by ITT of approximately 1,700,000 shares of Common Stock of Hartford Fire Insurance Company. Mr. Bernstein has requested that either ITT bring such an action in its own name or authorize his client to bring it on behalf of ITT. Copies of the letter were furnished to all of the directors, and Debevoise, Plimpton, Lyons & Gates, counsel for the non-officer directors, were each requested to review this matter and advise their respective clients with respect thereto.

Mr. Gates of Debevoise Plimpton and Mr. Brokaw of Davis Polk then made a preliminary report of their investigation to date, and stated that they had not had sufficient time to complete their investigat of the matter in order to make their recommendations at this meeting bu would be in a position to do so by the August meeting.

After discussion and upon motion duly made, seconded and unanimously adopted (Mr. Rohatyn not present or voting), it was

RESOLVED, that the matter be put over to the August meeting while the investigation by counsel is continued

RESOLVED, that Mr. S. Hazard Gillespie of Davis Polk & Wardwell and Mr. Samuel E. Gates of Debevoise, Plimpton, Lyons & Gates are authorized and instructed to report the substance of this determination to Mr. Bernstein.

EXCERPTS OF MINUTES OF ITT DIRECTORS MEETING HELD AUGUST 7, 1973, ANNEXED TO EXHIBIT J TO OBJECTIONS FILED IN HERBST BY BLECKERS (pp. A123-A125)

The ~~818th meeting (special) of the Board of Directors of~~ INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, was held pursuant to notice, in the Gardner Room of the Sheraton-Boston Hotel, Prudential Center, Boston, Massachusetts, on Tuesday, August 7, 197 at 4:30 P.M.

Present: Messrs. Bennett, Black, Brittenham, Brown, Day, Dunleavy, Elfers, Friedman, Geneen, Lannan, Laughlin, Lester, McC Perkins, Schoen, Westfall and Williams. Present by invitation were Messrs. Brokaw, Albel, Hamilton, Gates, Gillespie and Leisure.

Harold S. Geneen, Chairman, presided at the meeting and John J. Navin, Secretary, kept the minutes thereof.

Indopendont counsol, Mr. S. Hazard Gillespie, Davis Polk representing management directors, and Samuel E. Gates of Debevoise Plimpton representing outside directors (except Mr. Rohatyn), pursuant to the authorization by the Board at its July meeting reported that they

had informed their respective clients of the results of their investigations

and their conclusions to date in respect to the demand of stockholder

Bernstein that the Corporation institute suit against Lazard Freres, Mediobanca and others as set forth in a complaint submitted by Bernstein. They then presented to the Board a form of letter to counsel in the Bernstein suit which they recommended be considered as a response to the Bernstein demand. After discussion and review, the Board of Directors' authorized and directed the Secretary to forward a letter to counsel for Mr. Bernstein, copy annexed, to the effect that the Board viewed the commencement of the lawsuit on behalf of ITT based upon the allegations contained in the Complaint as inimical and prejudicial to the best interests of ITT and its stockholders. Before making any final resolution, however, the Secretary was to further inquire of Mr. Bernstein and his counsel in said letter as to whether they had any evidence not previously brought to the attention of the Board or its Counsel to support the charges contained in the Complaint. In such event, prior to the September meeting of the Board, Counsel could review such evidence, and conduct such further investigations as they deem necessary in order to report to the Board thereon.

EXCERPTS OF MINUTES OF ITT DIRECTORS MEETING HELD SEPTEMBER 12, 1973, ANNEXED TO EXHIBIT J TO OBJECTIONS FILED IN HERBST BY BLECKERS (pp. A126-A127)

The 819th meeting (Special) of the Board of Directors of INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, was held pursuant to notice, at the office of the Corporation, No. 320 Park Ave Borough of Manhattan, City and State of New York, on Wednesday, September 12, 1973, at 9:00 A.M.

Present: Messrs. Bennett, Black, Brittonham, Day, Dunleavy Elfers, Friedman, Geneen, Lannan, Laughlin, Lester, McCone, Perkins, Rohatyn, Schoen, Westfall and Williams. Present by invitation were Messrs. Brokaw and Aibel.

Harold S. Geneen, Chairman, presided at the meeting and John J. Navin, Secretary, kept the minutes thereof.

Supplementing developments previously reported at the meetin of the Board in July and August, Mr. Aibel reported that in response t the demand of a stockholder, Benjamin Bernstein, that the Corporatio institute an action against Mediobanca, Lazard Freres and others, pursuant to authorization of the Board a letter was directed to counse for Mr. Bernstein requesting any evidence not previously brought to the attention of the Board to support the charges contained in the den nd. Mr. Bernstein replied, according to Mr. Aibel, that

neither he nor his client had any further evidence to bring to the attention of the Board. Subsequently, he said, a Summons and Complaint was filed on August 15th, naming Mediobanca, ITT, et al, and served on the Corporation the following day. Mr. Aibel summarized the allegations of the Bernstein action and the relief it seeks, and then proceeded to review the transaction upon which the Bernstein action is based, the position of the Corporation and the strategy in connection with its defense. Jack Schafer of Covington & Burling, counsel for the Corporation in several shareholder derivative and class actions including the Herbst and Bernstein actions, also presented his views. There followed a general review and discussion of the Bernstein action and the various actions that could be taken by the Corporation.

At 10:00 A.M., the Chairman suggested that the meeting be adjourned until later in the day in order, in the meantime, for the directors to attend briefings by counsel relative to developments in pending shareholder derivative and class actions

OPINION OF CONNER, J. IN BERNSTEIN ACTION, EXHIBIT K TO OBJECTIONS FILED IN HERBST BY BLECKERS (pp. A128-A133)

Lawson F. Bernstein and Harold B. Obstfeld, New York City, for plaintiff.

Paul, Weiss, Rifkind, Wharton & Garrison, New York City, for defendants Mediobanca, Dreyfus and Lazard.

Wormser, Kiely, Allessandroni & McCann, New York City, for defendant Internatl. Telephone & Telegraph Corp.; Lawrence W. McKenna, New York City, Covington & Burling, Washington, D. C., John H. Schafer, III, Washington, D. C., of counsel.

OPINION AND ORDER

CONNER, District Judge:

This is an action by a shareholder of defendant International Telephone and Telegraph Corporation ("ITT"), brought derivatively on behalf of ITT. The Court's jurisdiction and the claims asserted are based on the Securities Exchange Act of 1934 ("Exchange Act"), particularly Sections 10(b) and 27, 15 U.S.C. §§ 78j(b) and 78aa, and on Rule 10b-5, 17 C.F.R. 240.10b-5, promulgated thereunder. Plaintiff has continuously been a shareholder of ITT since a time prior to the wrongful acts alleged in the complaint and commenced this action after a demand was made upon the Board of Directors of ITT to do so and the demand was refused.

Plaintiff's claim relates to an agreement whereby ITT sold approximately 1.7 million shares of stock of Hartford Life Insurance Company ("Hartford") which it had acquired for cash during the period from late 1968 to early 1969. The sale had been necessitated by ITT's desire to merge with Hartford. In order to make this a non-taxable event as to the Hartford shareholders, ITT was required, under the terms of an Internal Revenue Service ruling, to dispose of the stock.

To effect the sale, ITT relied upon its investment banker, defendant Lazard Freres & Co. ("Lazard-NY"). Lazard-NY in turn arranged for defendant Mediobanca Banca di Credito Finanziario-Societa Per Azioni ("Mediobanca"), to enter into a written contract (the "Mediobanca Agreement") with ITT to effect such disposition.[1] Mediobanca was acting on behalf of a syndicate whose membership is an issue in this case.

The Mediobanca Agreement, dated November 3, 1969, provided that the price ITT would receive would be computed, at Mediobanca's option, by one of three alternative methods. Under the option chosen, the price ITT was to receive would be determined by the proceeds Mediobanca realized in the subsequent resale of the shares through arms-length transactions, with Mediobanca receiving a fixed commission on the resale of each share.

This suit involves two of Mediobanca's resales totalling 500,000 shares. In substance, it is plaintiff's contention that these two sales were "sweetheart deals" which violated the Mediobanca Agreement in two respects. First, it is claimed that the two agreements were not purchase and sale agreements, but instead granted the buyers, defendant Les Fils Dreyfus & Cie., S. A. ("Dreyfus"), and International Investment Associates, S. A. ("IIA"), options to purchase the shares at a fixed price, without imposing any obligation to buy and without any consideration for the grant of the options. These "options" to buy at a price of $55 per share (allegedly granted at a time when the stock had a

1. The proposed merger was eventually rejected by the Insurance Commissioner of Connecticut. Thereafter, however, the Insurance Commissioner did approve an exchange offer under which ITT acquired 85% of the stock of Hartford by exchanging one share of ITT Convertible Series N Preferred Stock for each outstanding share of Hartford. Pursuant to this offer, Mediobanca exchanged the Hartford stock for an equal number of ITT shares. It was the subsequent resale of the ITT shares which forms the basis of this action.

value on the New York Stock Exchange of $60–$62 a share) were exercised when the market price of the shares is claimed to have been $76 as to the 100,000 shares purchased by Dreyfus and $79 as to the 400,000 shares purchased by IIA. Second, the agreements were allegedly not made at arms-length because Dreyfus was a member of the syndicate, and IIA was, through defendant Lazard Freres et Cie. ("Lazard-Paris"), an affiliate of alleged syndicate member Lazard-NY, as well as of Mediobanca itself.

The Complaint alleges that the membership of Dreyfus and Lazard-NY in the syndicate and the supposed affiliation between IIA and the other syndicate members was fraudulently concealed from ITT in violation of Section 10(b) of the Exchange Act and Rule 10b–5 promulgated thereunder. In particular, the Complaint charges that the following alleged facts were concealed from ITT:

(1) Jean Guyot, the President of IIA was a partner in Lazard-Paris and was or would soon become a member of the Board of Directors of Mediobanca, and Michel David-Weill, a member of the Board of Directors of IIA was a partner in Lazard-Paris, thereby tending to show IIA's affiliation with the syndicate members,

(2) Lazard-NY was a member of the syndicate, and

(3) Dreyfus was a member of the syndicate.

In response, defendants claim that:

(1) ITT was fully aware of Jean Guyot's partnership in Lazard-Paris: he has never been a member of the Board of Directors of Mediobanca. The other alleged affiliation between IIA and the syndicate could not possibly have been material to ITT's approval of the IIA resale,

(2) Lazard-NY was not a member of the syndicate, and

(3) ITT was fully aware of Dreyfus' participation in the syndicate.

Presently before the Court are two motions. The named defendants other than ITT have moved, pursuant to Rule 56, F.R.Civ.P., for summary judgment. This motion is based upon two alternative grounds:

(1) The decision by ITT's Board of Directors that this action should not be maintained is binding upon plaintiff and,

(2) There are no genuine issues as to any material facts alleged in the Complaint (e. g., ITT was *not* deceived as to any *material* fact relating to the Dreyfus and IIA sales and the contracts entered into for such sales were firm, mutually binding, arms-length agreements, not "sweetheart" options as plaintiff claims).

In response, plaintiff has moved, pursuant to Rule 56(f), F.R.Civ.P. for a denial or continuance of defendants' summary judgment motion until such time as plaintiff shall have had an opportunity, through discovery or other means, to obtain the facts needed to oppose that motion.

The issue presented by defendants' first ground for summary judgment is whether the decision to forego an action or to bring suit for damages is a matter of business judgment to be determined solely by the board of directors in the absence of so clear an abuse of discretion as to amount to waste. Surprisingly, no recent Second Circuit case has dealt directly with this issue. In a slightly different context, however, the Court of Appeals was confronted with a similar problem in *Alleghany Corp. v. Kirby*, 344 F.2d 571 (2d Cir. 1965), *cert. dismissed*, 384 U.S. 28, 86 S.Ct. 1250, 16 L.Ed.2d 335 (1966). In that case there was an application to intervene in an action originally commenced as a stockholders' derivative suit but in which the corporation had subsequently been substituted as plaintiff.

After having lost in both the District Court and the Court of Appeals, the

Board of Directors, upon advice of counsel, decided not to apply for certiorari. At this point, the application to intervene was filed. It was denied in the District Court and on appeal the Court of Appeals stated:

> "We fully agree with the District Court's conclusion that, on the record before it, the decision of the independent members of the Board of Directors not to apply for certiorari, after consultation with independent counsel and full presentation and consideration of relevant business and legal implications, did not result in 'inadequate representation as a matter of law.' *We know of no proposition of law that permits shareholders, absent any allegations of bad faith, collusion or negligence,* concededly neither present nor charged here, cf. *Sam Fox Publishing Co. v. United States*, 366 U.S. 683, 81 S.Ct. 1309, 6 L.Ed.2d 604 (1961), *to intervene, as of right, in order to continue litigation that independent members of the Board of Directors, acting in good faith and in the exercise of sound business judgment, have decided to terminate.*" 344 F.2d at 573 (emphasis added).

The force of this statement, however, is somewhat reduced by the fact that the potential interveners, sophisticated individuals who had followed the litigation closely, had waited until the eleventh hour to intervene and were held not to satisfy the timeliness requirement of Rule 24(a), F.R.Civ.P.

[1] Notwithstanding the paucity of legal precedent in this Circuit, the rule is well settled elsewhere that unless the refusal of the directors to sue upon a stockholder's demand was fraudulent or collusive or indicative of something worse than unsound business judgment exercised honestly in the corporate interest, derivative suits may not be maintained by stockholders. *United Copper Securities Co. v. Amalgamated Copper Co.*, 244 U.S. 261, 263–64, 37 S.Ct. 509, 61 L.Ed. 1119 (1917); *Hawes v. City of Oakland*, 104 U.S. 450, 26 L.Ed. 827 (1881); *Cosentino v. Carver-Greenfield Corp.*, 433 F.2d 1274, 1277 (8th Cir. 1970); *Ash v. International Business Machines, Inc.*, 353 F.2d 491, 492–93 (3d Cir. 1965), *cert. denied*, 384 U.S. 927, 86 S.Ct. 1446, 16 L.Ed.2d 531 (1966); *Stadin v. Union Electric Co.*, 309 F.2d 912, 921 (8th Cir. 1962); *Swanson v. Traer*, 249 F.2d 854, 858–59 (7th Cir. 1957); *Kemper v. American Broadcasting Cos.*, 365 F.Supp. 1272, 1274 (S.D.Ohio 1973); *Issner v. Aldrich*, 254 F.Supp. 696, 699 (D.Del.1966); cf. *Meyer v. Fleming*, 327 U.S. 161, 167, 66 S.Ct. 382, 90 L.Ed. 596 (1946). Otherwise, a litigious stockholder, no matter how small his holdings, could easily intrude upon the authority of those who are vested with the responsibility of transacting the corporation's business. *Landy v. Federal Deposit Insurance Corporation*, 486 F.2d 139, 146 (3d Cir. 1973), *cert. denied*, 416 U.S. 960, 94 S.Ct. 1979, 40 L.Ed.2d 312 (1974).

> "A corporation's right not to sue is correlative to its right to sue. [A]n individual stockholder has no more right to challenge by a derivative suit a decision by the board of directors not to sue than to so challenge any other decision by the board." *Swanson v. Traer, supra* at 859.

In *United Copper Securities Co. v. Amalgamated Copper Co., supra*, the plaintiffs were the owners of a small percentage of the United Copper Company. They brought an action on its behalf after a demand upon the Board of Directors to do so was refused.

Justice Brandeis viewed the question presented as being,

> "[w]hether a stockholder in a corporation which is alleged to have a cause of action in damages against others . . . may sue at law to recover such damages in the right of

the corporation, if, after request, it refuses to institute the suit itself?"

He answered the question by stating:

"Whether or not a corporation shall seek to enforce in the courts a cause of action for damages is, like other business questions, ordinarily a matter of internal management, and is left to the discretion of the directors, in the absence of instruction by vote of the stockholders. Courts interfere seldom to control such discretion *intra vires* the corporation, except where the directors are guilty of misconduct equivalent to a breach of trust, or where they stand in a dual relation which prevents an unprejudiced exercise of judgment . . . ." 244 U.S. at 263, 37 S.Ct. at 510.

The Complaint herein is devoid of any allegation that the alleged wrongdoers had control of the Board of Directors of ITT, or such relation to a majority or, indeed, any member of the Board as to permit the exercise of undue influence or that the Board's decision was contaminated by fraud or collusion or any misconduct whatever. The following statement in *United Copper* is therefore pertinent:

"[I]n the instant case there is no allegation that the United Copper Company is in the control of the alleged wrongdoers, or that its directors stand in any relations to them, or that they have been guilty of any misconduct whatsoever. . . . The fact that the cause of action is based on the Sherman Law [in the instant case the Securities Laws] does not limit the discretion of the directors or the power of the body of stockholders, nor does it give to individual shareholders the right to interfere with the internal management of the corporation."

In *Ash v. International Business Machines, Inc.*, *supra*, the factual situation was very similar to the one at bar. After a demand upon the Board of Directors was refused, the plaintiff, as a minority stockholder of the allegedly injured corporations, claimed he was entitled to sue derivatively. However, since nothing in the pleadings indicated that the refusal of the directors to sue was fraudulent or collusive, or represented anything worse than unsound business judgment honestly exercised in the corporate interest, they were held to be fatally deficient. The *Ash* Court, applying the sound business judgment rule and dismissing the action stated:

"The Supreme Court and, following it, the Court of Appeals have repeatedly stated and applied the doctrine that a stockholder's derivative action . . . can be maintained only if the stockholder shall allege and prove that the directors of the corporation are personally involved or interested in the alleged wrongdoing in a way calculated to impair their exercise of business judgment on behalf of the corporation, or that their refusal to sue reflects bad faith or breach of trust in some other way." 353 F 2d at 493.

To rule otherwise would improperly involve the Court in the business decisions of every corporation and force the Court to choose between the business judgment of a stockholder and that of the board of directors.

[2] The complaint in a derivative suit must be dismissed unless it can be shown that there was some action or threatened action of the directors beyond the authority conferred by the charter or the law under which the company was organized; or a fraudulent action which may result in serious injury to the company; or actions by the directors in their own interests and in a manner destructive of the company. *Hawes v. City of Oakland*, *supra*. Here, there is a conspicuous absence of any such allegation; instead, the complaint merely alleges that the Board of Directors has refused to

comply with plaintiff's demand to commence this action.

Plaintiff suggests that the board of directors of a corporation is obligated to pursue any and all causes of action which accrue in favor of the corporation and its failure to do so provides the basis for a derivative suit. We reject any such notion. The decision to forego a legally enforceable right may involve more than a consideration of the legal principles involved. Such decisions, like all management decisions, require a delicate balancing of complex business interests and relations. See Justice Brandeis' oft-quoted concurring opinion in *Ashwander v. T.V.A.*, 297 U.S. 288, 343–44, 56 S.Ct. 466, 80 L.Ed. 688 (1936). See also *Corbus v. Alaska Treadwell Gold Mining Co.*, 187 U.S. 455, 463, 23 S.Ct. 157, 47 L.Ed. 256 (1903); *Hawes v. City of Oakland*, *supra*, 104 U.S. at 462.

[3, 4] Plaintiff further argues that bad faith in refusal to bring suit should not be the only limitation upon the discretion of the directors. Indeed, a few decisions suggest that factors other and less compelling than bad faith or bias may suffice to disqualify directors from representing the corporate interest and thus make it permissible for a minority stockholder to sue on behalf of the corporation. See *Hill v. Wallace*, 259 U.S. 44, 42 S.Ct. 453, 66 L.Ed. 822 (1922); *Ash v. International Business Machines, Inc.*, *supra* at 493. However, even if there may be disqualifying circumstances other than bad faith or bias, no suggestion of any such circumstances appears in the Complaint. Plaintiff has, at this time, utterly failed to allege in specific terms either fraud, breach of trust, illegality or an *ultra vires* act on the part of ITT's Board of Directors. However, we feel that it would be inappropriate to grant summary judgment at this time. Plaintiff, a small stockholder of ITT, has not yet had an opportunity to engage in pre-trial discovery to any significant extent. And, although plaintiff cannot at this time present, by affidavit, facts essential to justify his opposition to defendants' summary judgment motion, a typical situation for the application of Rule 56(f) is where, as here, such facts are exclusively with or largely under the control of the moving party. 6 Moore, Federal Practice ¶ 56.24, p. 2875 (2d ed. 1974). It is only in the rarest of circumstances that summary judgment will be granted against a plaintiff in a stockholder's derivative action when there has not been an opportunity to resort to discovery procedures. *Schoenbaum v. Firstbrook*, 405 F.2d 215, 218 (2d Cir. 1958), *cert. denied*, 395 U.S. 906, 89 S.Ct. 1747, 23 L.Ed.2d 219 (1969).

In *Fogelson v. American Woolen Co., Inc.*, 170 F.2d 660 (2d Cir. 1948), the plaintiffs brought a shareholder's derivative action challenging the propriety of the corporation's pension plan. Defendants moved for summary judgment and the district court granted it on the ground that "no colorable reason to dispute the exercise by the directors of their judgment and discretion in the discharge of their duties" was presented. In its opinion, the court relied upon the uncontradicted affidavits of the directors that they had exercised their best business judgment; these directors included a former Governor of Massachusetts, a former governor of the Federal Reserve Board and a former Assistant Secretary of the Treasury. Nevertheless, the Court of Appeals for the Second Circuit reversed, stating that, although courts are reluctant to interfere with the business judgment of corporate directors and will do so only if there has been so clear an abuse of discretion as to amount to legal waste, the affidavits of the directors attesting to their exercise of proper business judgment was insufficient to support a motion for summary judgment on the business judgment defense.

Also meriting particular mention is *Subin v. Goldsmith*, 224 F.2d 753, 760 (2d Cir. 1955), which ruled that where

as here, the facts asserted by movant are peculiarly within the knowledge of the movant, the opponent must be given the opportunity to disprove these facts by cross-examination. See *Parsons v. Amerada Hess Corp.*, 422 F.2d 610 (10th Cir. 1970).

[5] The Court concludes that although plaintiff has yet made no showing sufficient to overcome the defense of business judgment, much, if not all, the possible evidence demonstrating bad faith is in the possession of defendants and that plaintiff should be given a reasonable opportunity to discover it. Summary judgment would be particularly inappropriate since the propriety of a business decision necessarily involves questions of motive and intent which are not generally amenable to summary disposition. See *United States v. Diebold*, 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962); *Poller v. Columbia Broadcasting System, Inc.*, 368 U.S. 464, 82 S.Ct. 486, 7 L.Ed.2d 458 (1962).

The second branch of defendants' motion, which asserts that no issue exists as to any material fact, cannot be sustained, defendants themselves having conceded that plaintiff should be allowed discovery as to the merits of the claim. The only issue now appears to be how extensive that discovery should be.

[6] The moving defendants argue that, as a matter of judicial economy, discovery relating to the business judgment defense should precede discovery on the merits of the claim itself. This would seem to be the logical course in that this defense is a threshold issue which may be dispositive. It therefore should be resolved before the substantive merits of the claim are adjudicated.

The Court's present denial of defendants' motion for summary judgment is, of course, without prejudice to their renewal of that motion after plaintiff has had a reasonable opportunity for discovery.

So ordered.

AFFIDAVIT OF MATHIAS L. SPIEGEL DATED JUNE 22, 1976 IN RESPONSE TO OPPOSITION OF ITT TO MOTION FOR LEAVE TO FILE AMENDED AND SUPPLEMENTAL COMPLAINT (pp. A134-A136)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

LOUIS BLECKER, et al., : 73 Civ. 4057 (WCC)

Plaintiffs, :

- against - : AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE

LAZARD FRERES & CO., : TO FILE AMENDED AND SUPPLEMENTAL COMPLAINT.

Defendants. :

----------X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MATHIAS L. SPIEGEL, being duly sworn, deposes and says:

1. This affidavit is submitted in response to the opposition of International Telephone and Telegraph Corporation ("ITT") to the above motion.

2. The simple answer to ITT's contention that the instant motion violates the original stay order is that when the same argument was made to Judge Tenney, he allowed the amended complaint, Opinion and Order, May 2, 1974, 73 Civ. 4057 (WCC); see Memorandum in Opposition, page 3.

3. The case for granting the instant motion is even stronger than the one made to Judge Tenney with respect to the amended complaint. In addition to the charge of conflict of interest made to Judge Tenney, the amended

and supplemental complaint alleges fraud in seeking to prevent judicial inquiry into the plan and scheme alleged, culminating in the proposed settlement of Herbst v. ITT, et al., Civ. 15, 155 ("Herbst").

4. In support of the proposed settlement in Herbst, Sidney B. Silverman, one of the attorneys for plaintiff and the class, submitted an affidavit in which he stated with respect to the Objections:

> "The Bleckers' statement of objections consists mainly of a personal attack upon Lawson F. Bernstein, Esq. I do not have personal knowledge of the dispute and have requested that Mr. Bernstein make a reply to the charges made by the Bleckers. He has done so in an affidavit which will be separately submitted. I believe, based upon the information furnished to me by Mr. Bernstein, that the Blecker objections are totally without merit."

5. In response to the Objections, Lawson F. Bernstein filed an affidavit, dated May 25,1976 (Exhibit A).

6. Following receipt of the Bernstein affidavit, plaintiffs moved for leave to file the amended and supplemental complaint. Following receipt of the Silverman affidavit, plaintiffs filed in Herbst the annexed affidavit incorporated herein (Exhibit B).

7. The fraud alleged in the amended and supplemental complaint is an essential element of the Objections.

8. The Objections are an inseparable part of the allegation in the amended and supplemental complaint that ITT and its directors fraudulently sought, and continue to seek, to prevent judicial inquiry into the plan and scheme alleged therein.

9. On June 15, 1976, I received a telephone call from Jonathan Weisgall of Covington & Burling, attorneys for ITT, advising me for the first time that ITT had requested and received from the Court an extension of their time to respond to the instant motion.

Mathias L. Spiegel

MATHIAS L. SPIEGEL

Sworn to before me this
22nd day of June, 1976.

Rae Gottlieb

Notary Public

RAE GOTTLIEB
COMMISSIONER OF DEEDS
CITY OF NEW YORK 2-1377
Certificate filed in New York County
Commission expires Oct. 1, 1976

EXHIBIT A TO AFFIDAVIT OF MATHIAS L. SPIEGEL DATED JUNE 22, 1976, AFFIDAVIT OF LAWSON F. BERNSTEIN DATED MAY 25, 1976 IN SUPPORT OF HERBST SETTLEMENT (pp. A137-A146)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HILDA HERBST and AARON M. FINE, Plaintiffs,	:	
vs.	:	Civil No. 15,155
INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION, et al, Defendants.	:	AFFIDAVIT OF LAWSON F. BERNSTEIN

LAWSON F. BERNSTEIN, being duly sworn, deposes and says that:

1. I am an attorney and counsellor-at-law in the State of New York, with my office at One Rockefeller Plaza, New York, New York 10020. I am the attorney for Benjamin Bernstein, the plaintiff in an action commenced on August 15, 1973 in the United States District Court for the Southern District of New York (File No. 73 Civ. 3549(WCC)) against Mediobanca and others ("Bernstein action"). Prior to the commencement of that action I withdrew from the instant Herbst action as pre-trial counsel for the plaintiff Hilda Herbst's attorneys.

2. Five weeks after I had commenced the Bernstein

action, Louis Blecker and Ruth Blecker ("the Bleckers"), as plaintiffs, by Netter & Spiegel, Esqs., of New York City, their attorneys, commenced an action in the same court in which Bernstein was then pending by filing a complaint which obviously copied the complaint in Bernstein. 1/ Mathias Spiegel, Esq. is the member of that firm who has had charge of the Blecker action since that time.

3. I do not represent any party in the Herbst action. However, as objections, dated May 14, 1976, have been filed in Herbst by Mr. Spiegel's firm on behalf of the Bleckers ("Objections") which contain statements clearly calculated to deceive this Court and to disparage me, I ask this Court to receive this affidavit in which I refute the charges contained in those statements.

4. In those Objections, the Bleckers charge as follows:

(a) That I lied to the Court in Blecker, United States District Judge Charles H. Tenney, in an affidavit which I submitted therein at Judge Tenney's request, when I confirmed ITT's representation to that Court that I had withdrawn as pre-trial counsel to plaintiff's

1/ That the Blecker complaint was a copy of the Bernstein complaint was also the opinion of United States District Judge Charles H. Tenney, expressed in His Honor's Memorandum Opinion in Blecker, dated December 10, 1973 (the last two lines on page 3 thereof and the first three lines on page 4) as follows:

> "A comparison of the complaints filed in the instant [Blecker] action and the Bernstein case reveals that both the factual allegations and the theory of recovery are virtually identical. Indeed, it occurs to this Court that the latter case might well have 'inspired' the instant action."

attorneys in Herbst two days prior to the institution of the Bernstein action (Objections, page 4, lines 5 to 10);

(b) That I withdrew from the Herbst action "in order to conceal the plan and scheme alleged in Blecker" and thereby "wrongfully induced the Court in the Southern District of New York to order Blecker stayed in favor of Bernstein" (Objections, page 5, lines 1 to 3);

(c) That "Lawson F. Bernstein knew that ITT could not afford to have the plan and scheme uncovered by him in Herbst and alleged in Blecker to become known. The IRS was investigating the ITT-Mediobanca transaction." (Objections, page 5, lines 4 to 7), and

(d) That "Bernstein will be allowed to founder on the business judgment defense" (Objections, page 6, lines 5-6).

5. I deny those charges. The charges in "(a)" through "(c)" of paragraph "4", above, have been made previously by Mr. Spiegel's clients in Blecker and have been repeatedly rejected therein by Judge Tenney and his successor in that action, Judge William C. Conner. Those rejections have been upheld by the Court of Appeals, Second Circuit, in the instances when Mr. Spiegel sought to overturn them by mandamus or appeal. As proof of those rejections, and in order to acquaint this Court with the holdings by Judge Tenney, Judge Conner, and the Second Circuit, I attach

hereto, as exhibits, copies of the following papers on file in the Blecker case:

Exhibit A: The Civil Docket sheets of the Clerk of the United States District Court, Southern District of New York (File No. 73 Civ. 4057) in Blecker, which lists the memorandum decisions, the orders, the denial of mandamus, and the dismissed appeal to which I have referred above.

Exhibit B: Judge Tenney's memorandum opinion (¶40108), dated December 10, 1975, which granted ITT's motion to stay the Blecker action.

Exhibit C: Judge Tenney's order, dated January 14, 1974, staying Blecker pursuant to the memorandum opinion described in "B", above.

Exhibit D: Judge Tenney's memorandum opinion and order (¶40247), dated January 18, 1974 denying (a) the Blecker's motion for reargument of the previously denied motion and (b) the Blecker's application for §1292(b) certification.

Exhibit E: The February 4, 1974 endorsement by Judge Tenney on the new motion pursuant

to Rule 60(b) to vacate His Honor's previous opinion and order which stayed Blecker.

Exhibit F: The Second Circuit's order of February 27, 1974, denying the Bleckers' petition for writ of mandamus addressed to the stay and §1292(b) order of Judge Tenney described above.

Exhibit G: Judge Tenney's memorandum opinion (#40667), dated May 3, 1974, granting the Bleckers' motion to add additional parties and to serve them, but denying their motion to vacate the existing stay.

Exhibit H: The May 7, 1974 endorsement by Judge Tenney on the Bleckers' order to show cause as described in "I" below. The docket for this paper appears to duplicate "I".

Exhibit I: The May 9, 1974 memorandum endorsed by Judge Tenney on the back of the Bleckers' proposed order to show cause to consolidate the Bernstein and Blecker actions, by which His Honor refused to issue that order to show cause.

Exhibit J: The Bleckers' May 20, 1974 notice of appeal from the order of Judge Tenney that is contained in the memorandum opinion described in "G", above.

Exhibit K: The Second Circuit's Order, dated June 11, 1974, dismissing the Bleckers' appeal described in "J", above.

Exhibit L: Judge Conner's memorandum opinion and order (#42046), dated March 14, 1975, denying the Bleckers' application for an order vacating the existing stay of all further proceedings in the Blecker action.

Exhibit M: Judge Conner's memorandum opinion and order (#43509), dated December 9, 1975, denying the Bleckers' new motion to vacate the stay, "without leave to renew, unless subsequent developments substantially alter the premises upon which this memorandum and its predecessors were based." (Underlining is His Honor's.)

5. Nowhere in the Objections, signed (and obviously prepared) by Mr. Spiegel, is it disclosed to this Herbst court that Mr. Spiegel's firm has made the seven above-described attempts to insinuate itself into the Berhstein action.

6. As for Mr. Spiegel's charge -- which I have paraphrased in "(d)" of paragraph "4", above -- that ITT is conspiring with me for the Bernstein case to "founder", I deny it, and I am certain that ITT will deny it, too.

7. The Bleckers are not being honest with this Court when they state in their Objections (page 3, lines 7 to 10) that Judge Conner advised their counsel (presumably at the April 9, 1976 conference which, I am informed, His Honor held with all counsel in Blecker) that they "should first seek relief in Herbst by objecting to the proposed settlement, and then he [Judge Conner] would entertain their motion for leave to file a second amended complaint (Objection page 3, lines 8 to 10)." I have been told something quite different by Robert S. Smith, Esq., of Paul, Weiss, Rifkind, Warton & Garrison, the attorneys for the defendants in Blecker other than ITT, who was present at that conference and whom I recently called for information about it. According to Mr. Smith, Mr. Spiegel applied to Judge Conner for permission to file a second amended complaint which proposed to add a cause of action alleging the fraudulent concealment and conflict of interest with which the Objections charge me and ITT. By that proposed pleading the Bleckers sought equitable relief from the proposed settlement which is now before this Herbst Court. Judge Conner, I am informed by Mr. Smith, told Mr. Spiegel that if he is unhappy about the proposed Herbst settlement he should go to this Herbst Court and if he (Mr.

Spiegel) is not given an opportunity by this Herbst Court to be heard then he can file the proposed pleading in the Blecker action, but if Mr. Spiegel has a fair hearing then "the door will clang shut" in New York.

8. In the Objections prepared by him Mr. Spiegel attacks my personal and professional probity and literally portrays me as unfit to practice law. Such is the face that Mr. Spiegel puts on to this Herbst Court and has put on to the Bernstein Court. But he has put on a different face to me. At the same time that he was attacking me before Judge Tenney, charging that I was unfit to conduct the Bernstein action because of, first, my alleged conflict of interest, and, second, my alleged inability as a single practitioner to prosecute the Bernstein action, Mr. Spiegel wrote to me as follows, in a letter dated November 30, 1973 (a copy of which is attached hereto as Exhibit "N"):

> "I have your epistle to Judge Tenney dated November 28, 1973. My observations which you complain about, do not express any opinion as to your competence or experience; I have no such knowledge.
>
> "I have stated to the Court that in large and complex litigation a single practitioner appearing alone is at a disadvantage; that you are a single practitioner.[2/] I have no reason to modify these

2/Judge Tenney dismissed that claim as being "wholly devoid of merit". (Footnote 1, His Honor's memorandum opinion dated December 10, 1973 (Memorandum #40108, Exhibit "B" attached hereto, page 5, line 19).

statments.

"If my statements have offended you, no offense was intended. It would be more profitable, however, to discard diatribe and polemic, and for us to work together positively on behalf of our clients, shareholders in International Telephone & Telegraph Corporation. In this regard, you have our cooperation if that be your wish." (The underlining has been added by me.)

I did not respond to that letter in any way, although I did call it to Judge Tenney's attention in my affidavit in Blecker, sworn to January 16, 1974, submitted therein at Judge Tenney's request.

9. As I also said in that affidavit in Blecker, Mr. Spiegel made no mention in his November 30, 1973 letter to me of any alleged conflict of interest on my part. Rather, his letter was an expression of his desire "to work together" with me. As I then observed, a lawyer who seriously charges another lawyer with a conflict of interest should be made of sterner stuff. It was clear that Mr. Spiegel and his firm wanted "in" on the Bernstein action and that, because of their desire to accomplish that end, Mr. Spiegel played the Court in Bernstein and me false, by making charges to that Court of an unfounded conflict of interest on my part, on the one hand, and by transparent blandishments to me, on the other. The Court in Bernstein was not beguiled

by that Janus-faced conduct on the part of the Bleckers and their counsel. And I trust that this Court in Herbst will not be either.

s/
Lawson F. Bernstein

Sworn to before me this
25th day of May, 1976.

s/
Notary Public

NOTARY PUBLIC
Commission Expires March 30, 1977

EXHIBIT B TO AFFIDAVIT OF MATHIAS L. SPIEGEL DATED JUNE 22, 1976, AFFIDAVIT OF MATHIAS L. SPIEGEL DATED JUNE 2, 1976 IN RESPONSE TO AFFIDAVITS OF SIDNEY B. SILVERMAN AND LAWSON F. BERNSTEIN IN SUPPORT OF HERBST SETTLEMENT
(pp. A147-A150)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HILDA HERBST and AARON M. FINE,	:	
	:	Civil No. 15,155
Plaintiffs,	:	
	:	AFFIDAVIT OF MATHIAS L. SPIEG
vs.	:	A RESPONSE TO AFFIDAVITS OF
	:	SIDNEY B. SILVERMAN AND
INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION, et al.,	:	LAWSON F. BERNSTEIN
	:	
Defendants.	:	

MATHIAS L. SPIEGEL, being duly sworn, deposes and says:

1. I am a member of the firm of Netter and Spiegel, attorneys for Louis and Ruth Blecker, plaintiffs in Blecker v. Lazard Freres, et al., 73 Civ. 4057 (WCC) ("Blecker") United States District Court, Southern District of New York, who have objected to the proposed settlement of the above entitled action ("proposed settlement").

2. This affidavit is submitted in response to the affidavits of Lawson F. Bernstein, and Sidney B. Silverman,

dated May 25 and May 28, 1976 respectively, in support of the proposed settlement.

3. Following receipt of the Bernstein affidavit plaintiffs in Blecker moved for leave to file the second amended complaint (copy annexed) referred to in their objections.

4. The second amended complaint alleges, inter alia, a conspiracy to avoid judicial inquiry into the plan and scheme alleged in Blecker (¶¶34,35(f) ("judicial inquiry").

5. Among the acts alleged in the second amended complaint to have occurred in an effort to avoid judicial inquiry are:

a) The withdrawal of Lawson F. Bernstein from Herbst to bring Bernstein v. Mediobanca, et al., 73 Civ. 3549 (WCC) ("Bernstein"), United States District Court, Southern District of New York (¶¶48-50).

b) The Stay of Blecker in favor of Bernstein (¶¶52-55).

c) The proposed Settlement (¶¶56-58).

6. To effect the acts alleged in ¶¶48-50, 52-55 and 56-58 the second amended complaint alleges further, inter alia,

that false statements were made to the District Court for the Southern District of New York and material facts concealed from that Court and this Court.

7. Among the false or misleading statements made to the District Court in New York and Connecticut are:

a) that Lawson F. Bernstein withdrew as Pre-Trial Counsel in Herbst prior to the commencement of Bernstein. (Bernstein affidavit, May 25, 1976, ¶1);

b) that Boehm v. Bennett, et al. ("Boehm"), 74 Civ. 1132 (WCC) United States District Court, Southern District of New York, is the first in time of the derivative actions commenced against the Directors of ITT (Silverman affidavit, May 28, 1976, p.12);

c) that since August 13, 1973, Lawson F. Bernstein has not been active to any degree in Herbst (Exhibit "F" Blecker Objections p.3, ¶6.)

d) that Sidney B. Silverman does not have personal knowledge of any of the matters contained in the Blecker objections (Silverman affidavit, May 28, 1976, III b), p.43).

8. The second amended complaint in Blecker further alleges, inter alia, that:

a) Lawson F. Bernstein and Silverman and Harnes acted and continue to act in concert with the Directors and Management of ITT (¶¶55-58) and;

b) conflicts of interest so affect Herbst's relationship to Bernstein, Blecker and Boehm as to require intervention of the Court and equitable relief (¶¶118-143).

9. While this Court may ultimately conclude that the proposed settlement in Herbst, or a modification of it, should be approved, allegations of the second amended complaint in Blecker and the affidavits of Lawson F. Bernstein and Sidney B. Silverman submitted in support of the Herbst settlement require an evidentiary hearing on the matters raised in the Blecker Objections.

Mathias L. Spiegel

Sworn to before me this
2nd day of June, 1976

RAE GOTTLIEB
COMMISSIONER OF DEEDS
CITY OF NEW YORK 2-1377
Certificate filed in New York County
Commission expires Oct. 1, 19

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LOUIS BLECKER and RUTH BLECKER, Plaintiffs	)	73 Civ. 4057 (WCC)
v.	)	
LAZARD FRERES & CO., MEDIO BANCA di CREDITO FINANZIARO-SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., LAZARD FRERES ET CIE and INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION Defendants	)	

MOTION TO VACATE STAY OF ACTION

On the annexed affidavit of Mathias L. Spiegel, dated July 16th, 1976, the Notice of Hearing and Stipulation of Settlement, dated respectively March 26 and March 11, 1976, in Herbst v. International Telephone and Telegraph Corporation, et al., Civ. No. 15,155 United States District Court, District of Connecticut ("HERBST"), the Stipulation and Order of Transfer to the District of Connecticut, dated May 18, 1976, filed in Boehm v. Bennett, et al., 74 Civ. 1132 (WCC), the Response of Robert L. Boehm, dated May 25, 1976, to the Notice of Settlement filed in Herbst, the Notice of Motion and affidavit of Milton S. Gould, Esq., both dated June 21, 1976, filed in Boehm v. Bennett, et al., Civil No. II-76-215, United States District Court, District of Connecticut, and on all the proceedings heretofore held herein, plaintiffs Louis and Ruth Blecker move this Court

for an order vacating the stay of all further proceedings in this case, pending disposition of Benjamin Bernstein v. Mediobanca di Credito Finanzario-Societa Per Azioni, et al., 73 Civ. 3549 (WCC).

This motion will be brought on to be heard before the Hon. William C. Conner, U.S.D.J., on August 2d 1976, in Room 3006, United States Courthouse, Foley Square, New York, New York.

Respectfully submitted,

July 26, 1976

MATHIAS L. SPIEGEL
Netter & Spiegel
18 East 48th Street
New York, New York 10017

Attorneys for Plaintiffs
Louis Blecker and
Ruth Blecker

TO: MESSRS. PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
Attorneys for Defendant
Lazard Freres & Co.
345 Park Avenue
New York, New York 10022

MESSRS. WORMSER, KIELY, ALESSANDRONI,
MAHONEY & McCANN
Attorneys for Defendant
International Telephone and
Telegraph Corporation
100 Park Avenue
New York, New York 10017

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LOUIS BLECKER and RUTH BLECKER,

Plaintiffs

v.

LAZARD FRERES & CO., MEDIO BANCA di CREDITO FINANZIARO-SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., LAZARD FRERES ET CIE and INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

Defendants

73 Civ. 4057 (WCC)

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MATHIAS L. SPIEGEL, being duly sworn, deposes and says:

1. I am a member of the firm of Netter & Spiegel, attorneys for the plaintiffs herein ("Bleckers").

2. I appeared for the Bleckers in connection with the objections filed by them to the proposed settlement in Herbst v. ITT, et al., Civil No. 15,155, District of Connecticut ("Herbst"), a class action brought by former shareholders of the Hartford Fire Insurance Company ("Hartford") alleging claims arising out of ITT's acquisition of Hartford.

3. Three actions were brought in this District derivatively on behalf of ITT alleging claims arising out of ITT's acquisition of Hartford.

4. The first of these actions, Bernstein v. Mediobanca di Credito Finanziaro-Societa Per Azioni, et al., 73 Civ. 3549 (WCC) ("Bernstein") was filed on August 15, 1973; approximately one month later this action ("Blecker") was filed; and, on March 11, 1974, Boehm v. Bennett, et al., 74 Civ. 1132 (WCC) ("Boehm") was filed.

5. By Order dated January 14, 1974 Blecker was stayed in favor of Bernstein ("Stay").

6. On March 11, 1974 an amended complaint was filed in Blecker and plaintiffs moved to vacate the stay and for leave to name the directors of ITT as parties defendant.

7. In an opinion and order dated May 2, 1974, the Honorable Charles H. Tenney granted plaintiffs' motion to name the directors of ITT as parties defendants but refused to vacate the stay.

8. Thereafter the Bernstein and Blecker actions were transferred to the Honorable William C. Conner before whom the Boehm action was pending.

9. Twice thereafter plaintiffs moved to vacate the stay. Judge Conner denied each motion in opinions and orders dated March 14, 1975 and December 9, 1975 respectively.

10. By notice dated March 28, 1976 all ITT shareholders were advised of a stipulation of settlement in Herbst dated March 11, 1976.

11. By stipulation and order dated May 18, 1976 Boehm was transferred to the District of Connecticut.

12. On May 19, 1976 the Bleckers filed objections to the proposed settlement in Herbst; on May 25, 1976 Mr. Boehm filed a response to the proposed settlement in Herbst.

13. On May 27, 1976 plaintiffs in Blecker filed a motion for leave to file a second amended complaint and name the directors of ITT not already so named as parties defendant.

14. On June 4, 1976 a hearing was held in Herbst on the proposed settlement.

15. On or about June 22, 1976 plaintiff in Boehm filed a motion to dismiss its claims against the directors of ITT.

16. On July 9, 1976 plaintiffs in Blecker were granted leave to renew their motion to vacate the stay.

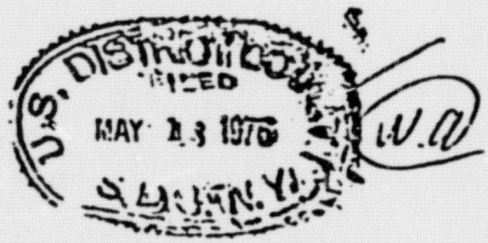
MATHIAS L. SPIEGEL

Sworn to before me this 26th day of July, 1976

Allan H. Carlin

ALLAN H. CARLIN
NOTARY PUBLIC, State of New York
No. 31-4622705
Qualified in New York County
Commission Expires March 30, 1978

STIPULATION AND ORDER ON CONSENT TRANSFERRING BOEHM V. BENNETT, ET AL., 74 CIV. 1132 (WCC) TO DISTRICT OF CONNECTICUT ANNEXED TO AFFIDAVIT OF MATHIAS L. SPIEGEL DATED JULY 26, 1976 (pp. A156-A159)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ROBERT L. BOEHM,

Plaintiff,

-against-

R. E. BENNETT, et al.,

Defendants.

74 Civ. 1132 (WCC)

STIPULATION AND ORDER TRANSFERRING ACTION

WHEREAS this action was commenced by the filing of a complaint with this court on March 11, 1974 and, other than the filing of defendants' answers and preliminary discovery proceedings, no further proceedings having been had herein; and

WHEREAS there is pending in the United States District Court for the District of Connecticut an action entitled Hilde Herbst, et al. v. International Telephone & Telegraph Corporation, et al., Civil No. 15,155 (the "Herbst action"), which action was commenced in that Court on July 6, 1972; and

WHEREAS this action and the Herbst action are related cases in that there is a virtual identity between the defendants named in both actions, the transactions complained of in both actions are the same, and the relief sought in either

action, if granted, would affect the other action; and

WHEREAS the parties to the Herbst actions have entered into a Stipulation of Settlement and submitted it to the Herbst Court for approval upon notice to the class members on whose behalf the Herbst case is being prosecuted and upon notice to all shareholders of International Telephone and Telegraph Corporation; and

WHEREAS determination of the application for approval of the Herbst settlement raises issues pertinent to this action;

WHEREAS it appears that this action could have been brought in the United States District Court for the District of Connecticut and that a transfer of this action to that Court will facilitate the expeditious disposition of this litigation and will serve the interests of Justice; now, therefore

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned attorneys for the plaintiff and for all of the defendants who have been served herein that this action be transferred fortwith to the United States District Court for the District of Connecticut; and

IT IS FURTHER STIPULATED AND AGREED that this Stipulation and Order and all action taken pursuant hereto shall not be deemed to constitute a waiver by any of the defendants

of any defenses they might have with respect to the summons and complaint herein.

Dated: New York, New York
May 13, 1976

SHEA, GOULD, CLIMENKO, KRAMER & CASEY

By _____
A Member of the Firm
Attorneys for Plaintiff
330 Madison Avenue
New York, New York 10017

WORMSER, KIELY, ALESSANDRONI, MAHONEY & McCANN

By _____
A Member of the Firm
Attorneys for Defendant
International Telephone & Telegraph Corporation
100 Park Avenue
New York, New York 10017

DAVIS POLK & WARDWELL

By _____
A Member of the Firm
Attorneys for Defendants Bennett, Geneen, Laughlin, Perry, Schoen, Westfall and Williams
One Chase Manhattan Plaza
New York, New York 10005

DEBEVOISE, PLIMPTON, LYONS & GATES

By _____
A Member of the Firm
Attorneys for Defendants Black, Brown, Day and McCone
299 Park Avenue
New York, New York 10017

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By _____
~~A Member of the Firm~~
Attorneys for Defendants Rohatyn and Lazard Freres & Co.
345 Park Avenue
New York, New York 10022

SO ORDERED:

_____
U. S. D. J.

BOEHM RESPONSE TO NOTICE OF PROPOSED SETTLEMENT IN HERBST ACTION, ANNEXED TO AFFIDAVIT OF MATHIAS L. SPIEGEL DATED JULY 26, 1976 (pp.A160-A164)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HILDA HERBST and AARON M. FINE,

Plaintiffs,

-against-

INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION, et al.,

Defendants.

Civil No. 15,155

RESPONSE TO NOTICE OF PROPOSED SETTLEMENT

ROBERT L. BOEHM, a common stockholder of ITT, by his attorneys, Shea Gould Climenko Kramer & Casey, makes the following response to the notice of hearing dated March 26, 1976 and the stipulation of settlement in the above entitled action.

1. Boehm is plaintiff in an action entitled Robert L. Boehm, plaintiff v. R. E. Bennett, et al., defendants, commenced in the United States District Court, Southern District of New York, Index No. 74 Civ. 1132, and presently being transferred to this Court.

2. Said action is a derivative action in the right of ITT against the directors thereof and Lazard Freres & Co. seeking to hold the defendants responsible for all loss, damage, cost and expense to ITT by reason of violations of securities laws and common law liabilities arising from the transactions between ITT and the Hartford shareholders based on the Exchange Offer of May 26, 1970. In said action, Boehm's attorneys secured sworn answers to interrogatories from each of the director-defendants to the effect that said defendants did not

in any way derive any profit or have any financial interest, direct or indirect, in respect of Hartford shares acquired by Mediobanca from ITT or transactions therein and that further none of said directors (other than Felix Rohatyn, who is a partner of Lazard Freres New York) had any direct or indirect relationships with Lazard Freres or Mediobanca from which any of them derived any financial gain.

3. Beginning in or about late December 1975 and thereafter, the attorneys for Boehm conducted a review of all the deposition and discovery materials and other related documents in the Herbst action pending in this Court. Said review failed to disclose a basis upon which personal liability could be affixed to the ITT directors for breach of fiduciary duty or Federal securities law violations which would require them to indemnify ITT for any liability sustained by ITT in respect of the Hartford transaction. In our opinion, the Herbst attorneys have conducted a diligent inquiry into the question of the complicity and knowledge of ITT directors in the undisclosed arrangements between Mediobanca and Lazard which formed the basis for the revocation of the IRS tax ruling upon which the ITT-Hartford Exchange Offer was predicated. No evidence of knowledge on the part of the directors has been uncovered. Moreover, it was in the interest of the Herbst plaintiffs in their own case to establish such complicity and knowledge if they could. A claim for negligence on the part of said directors in not learning said facts where the directors acted in good faith and in the economic interest of the corporation would have little prospect of success and would not be in the best interests of the corporation.

4. From an economic standpoint, the settlement appears to be a fair and businesslike way for ITT to dispose of its possible liability to the Hartford shareholders, and one which is well within the business judgment rule. The director-defendants, having been made the subject of claims against them personally by ITT shareholders, are not unreasonable in asking for personal releases in connection with the settlement, where they acted in good faith on behalf of the ITT shareholder and not in their personal financial interest. Such releases would also be economically beneficial to the corporation, since they would put an end to stockholder litigation in which the corporation would have to bear the directors' expenses under applicable indemnity provisions. All the directors have sworn that they derived no gain or benefit, directly or indirectly, from the transaction set forth in the complaint and those that might have had occasion to know, have sworn that they did not know the facts which constitute the basis of the allegation of non-disclosure. These sworn statements are uncontradicted. If these sworn assertions prove to be false at some later date, the corporation will not be without its remedy and that will be the least of the adverse consequences to said director-defendants should they be found to have made false statements under oath.

5. The settlement does not provide for any release from ITT to Lazard or its partners (Rohaytn is being released solely in his capacity as a director of ITT). This will leave open the question of whether Lazard should not bear some financial responsibility to ITT for all of the costs and expenses borne by ITT in respect of the matters set forth in the Herbst

complaint and the Boehm complaint, a claim which plaintiff Boehm does not intend to abandon.

6. In the light of the foregoing circumstances, the attorneys for plaintiff Boehm have reached the conclusion based on facts presently available that the proposed settlement of the Herbst action would appear to be in the best interests of ITT and its shareholders.

7. The attorneys for Boehm are advised that objections to the settlement have been filed by certain other attorneys purporting to represent ITT stockholders. These objections assert, inter alia, that the Court in the Herbst action lacks power to grant relief by way of a release from ITT to its directors which would be binding upon plaintiffs in ITT stockholders' actions, such as the Boehm action.

8. In this connection, the Court should be advised that the attorneys for Boehm have entered into a stipulation transferring the Boehm v. Bennett action from the Southern District of New York to the District of Connecticut and an order has been entered on this stipulation by Judge Conner (USDC, SDNY). The transfer of Court papers is presently being arranged by the Office of the Clerk of the United States District Court for the Southern District of New York.

9. If, after opportunity to hear such other and further facts as may be presented by objectants or other interested parties, it appears that the said settlement is in the best interests of ITT, counsel for Boehm will not oppose a motion by the ITT directors to dismiss the Boehm action as against them based on the releases provided for in the stipulation of settlement.

10. Counsel for plaintiff Boehm have no arrangements with the attorneys for the Herbst plaintiffs or with any other party plaintiff or defendant or their counsel in the Herbst action or in any other action pending against ITT or its directors concerning the subject of fees. During the course of discussions with counsel for the Herbst plaintiffs, there was discussion about permitting counsel for the Herbst plaintiffs to include the services of the attorneys for the Boehm plaintiff in the fee application to be made by the Herbst attorneys. However, this idea was rejected and such arrangements have not been made. Counsel for plaintiff Boehm intend at the appropriate time to make their own application for an allowance in respect of this matter.

Dated: New York, New York
May 25, 1976

Respectfully submitted,

SHEA GOULD CLIMENKO KRAMER & CASEY

By Ira Porter

A Member of the Firm
Attorneys for plaintiff in
Boehm v. Bennett, et al.
330 Madison Avenue
New York, New York 10017
(212) 661-3200

NOTICE OF MOTION IN BOEHM ACTION DATED JUNE 21, 1976 TO (A) CONSOLIDATE ACTION WITH HERBST ACTION AND (B) TO DISMISS AS TO ITT DIRECTORS, ANNEXED TO AFFIDAVIT OF MATHIAS L. SPIEGEL DATED JULY 26, 1976 (pp.A165-A169)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBERT L. BOEHM, Plaintiff, -against- R.E. BENNETT, et al., Defendants.	Civil No. Action No. 2
HILDA HERBST and AARON M. FINE, Plaintiffs, -against- INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION, et al., Defendants.	Civil No. 15,155 Action No. 1 NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of Milton S. Gould, Esq. (attorney for plaintiff Boehm in Action No. 2), sworn to June 21, 1976, a motion will be made:

(1) Pursuant to FRCP Rule 42 consolidating Action

No. 2 with Action No. 1 to the extent and for the purposes set forth in the annexed affidavit;

(2) Pursuant to FRCP Rules 23.1 and 41 dismissing (upon the application of plaintiff Boehm) the claims set forth in the complaint in Action No. 2 against the individual director-defendants of International Telephone & Telegraph Corporation upon such additional notice, if any, to the shareholders of defendant International Telephone & Telegraph Corporation as the Court may require and direct;

(3) Directing that claims in Action No. 2 against defendant Lazard, Freres & Co. proceed expeditiously to trial, consistent with the calendar of the Court and the convenience of the Court, the parties and their counsel;

and for such other and further relief as the Court may deem just and proper.

The motion will be returnable at the United States Court House, at 450 Main Street, in the City of Hartford, Connecticut, on such date and at such time as is fixed by the Court on notice to counsel.

Dated: New York, New York
June 21, 1976.

Yours, etc.,

SHEA GOULD CLIMENKO KRAMER & CASEY

By _____
A Member of the Firm
Attorneys for Plaintiff
in Action No. 2
330 Madison Avenue
New York, New York 10017
(212) 661-3200

TO:

SIDNEY B. SILVERMAN, ESQ.
Silverman & Harnes
75 Rockefeller Plaza
New York, New York 10019
Attorney for Plaintiff
In Action No. 1

JAMES O'CONNER SHEA, ESQ.
900 Chapel Street
New Haven, Connecticut
Attorney for Plaintiff
In Action No. 1

JOHN H. SCHAFER, ESQ.
Covington & Burling
888 Sixteenth Street, N.W.
Washington, D.C. 20006
Attorney for Defendant ITT

JOSEPH P. COONEY, ESQ.
Cooney & Scully
266 Pearl Street
Hartford, Connecticut 06103
Attorney for Defendant ITT

S. HAZARD GILLESPIE, ESQ.
Davis Polk & Wardwell
One Chase Manhattan Plaza
New York, New York 10005
Attorney for Defendants Brittenham, et al.

ROBERT L. ROSENSWEIG, ESQ.
Shipman & Goodwin
799 Main Street
Hartford, Connecticut 06103
Attorney for Defendants Brittenham, et al.

SAMUEL E. GATES, ESQ.
Debevoise, Plimpton, Lyons & Gates
299 Park Avenue
New York, New York 10017
Attorney for Defendants Black, et al.

JOHN Q. TILSON, ESQ.
Wiggin & Dana
205 Church Street
New Haven, Connecticut 06508
Attorney for Defendants Black, et al.

HONORABLE SIMON H. RIFKIND
Paul, Weiss, Rifkind, Wharton & Garrison
345 Park Avenue
New York, New York 10022
Attorney for Defendants
Lazard, Freres & Co. and Rohatyn

JAMES A. WADE, ESQ.
799 Main Street
Hartford, Connecticut 06103
Attorney for Defendants
Lazard, Freres & Co. and Rohatyn

ABRAHAM L. POMERANTZ, ESQ.
Pomerantz Levy Haudek & Block
295 Madison Avenue
New York, New York 10017
Counsel for Objector Morris Shapiro

MORDECAI ROSENFELD, ESQ.
233 Broadway
New York, New York 10007
Attorney for Objector Morris Shapiro

BENNETT FRANKEL, P.C.
666 Fifth Avenue
New York, New York 10019
Attorney for Objector Elias Auerbach

HONORABLE JOSEPH BLUMEN
United States District Judge
District of Connecticut
U. S. Court House
350 Main Street
Hartford, Connecticut

AFFIDAVIT OF MILTON S. GOULD DATED JUNE 21, 1976 IN SUPPORT OF BOEHM MOTION, ANNEXED TO AFFIDAVIT OF MATHIAS L. SPIEGEL DATED JULY 26, 1976 (pp. A170-A182)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBERT L. BOEHM, Plaintiff, -against- R.E. BENNETT, et al., Defendants.	:	Civil No. Action No. 2
HILDA HERBST and AARON M. FINE, Plaintiffs, -against- INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION, et al., Defendants.	:	Civil No. 15,155 Action No. 1

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MILTON S. GOULD, being duly sworn, deposes and says:

1. I am a member of the firm of Shea Gould Climenko Kramer & Casey, attorneys for the plaintiff in Action No. 2 (hereinafter the "Boehm action"). I make this affidavit in

support of plaintiff Boehm's application (i) to consolidate the Boehm action with Action No. 1 (hereinafter the "Herbst action"), (ii) for a voluntary dismissal of the Boehm claims against the individual director-defendants of International Telephone & Telegraph Corporation ("ITT") and (iii) to request that if the Herbst action is settled and the derivative action against the directors is dismissed in connection therewith, that the remaining derivative claims against Lazard be set down for prompt trial on the merits.

2. The Boehm action was commenced in the United States District Court for the Southern District of New York in March 1974 at or about the time when the Internal Revenue Service ("IRS") announced the revocation of its ruling with respect to the Hartford transaction. The Boehm action is a derivative action in the right of ITT against the individual directors thereof and Lazard seeking to hold said individuals and Lazard liable to ITT for any damage incurred by ITT as a result of misrepresentations, if any, made to the Hartford shareholders. The Herbst action had been pending prior to the commencement of the Boehm action, it being a class action by the former Hartford shareholders against ITT, its individual directors and Lazard based on misrepresentations in the Exchange Offer in respect of the tax consequences of the exchange.

3. In connection with the proposed settlement of the Herbst action, my firm arranged to have the Boehm action trans-

ferred to the District of Connecticut in order that related actions could be in one forum and thereby be susceptible of an integrated disposition if the Court found same to be in the interest of justice. On behalf of plaintiff Boehm, my firm filed a Response to the Notice of Proposed Settlement stating that on the basis of the facts then known to us we did not oppose the settlement, including those portions thereof which provided for releases by ITT to the individual directors. We advised the Court that we intended to reserve our right to pursue the derivative claim against Lazard.

4. In the course of my presentation before the Court on June 4, 1976, the Court suggested that if my firm was of the view that the Boehm derivative action against the directors was not worthy of prosecution, we should consider moving for dismissal thereof. I advised the Court that I would give the suggestion consideration and the present motion is responsive thereto. What is sought on the present motion is that:

(i) The Boehm action be consolidated with the Herbst action for purposes of joint consideration of the Herbst settlement and the voluntary dismissal of the Boehm action and for purposes of trial if such settlement and dismissal does not occur.

(ii) In connection with and as part of the Herbst settlement, the Boehm action be dismissed against the individual directors by reason of

its having lack of any prospect of success and because its continued prosecution is contrary to the interests of ITT.

(iii) The remaining derivative claim against Lazard be reached expeditiously for trial consistent with the convenience of the Court and the parties.

This affidavit will deal with these subjects seriatim.

I. MOTION FOR CONSOLIDATION

5. In effect, the Boehm derivative action constitutes a cross-claim or third-party claim by ITT against the directors and Lazard. If ITT had chosen to do so, it could have included such cross-claims for indemnification against the individual director-defendants and Lazard in its answer in the Herbst action. The claims in Boehm and in Herbst clearly arise out of common questions of law and fact as provided in FRCP Rule 42. It is, therefore, respectfully requested that the Court consolidate the Boehm action with the Herbst action for the following purposes:

(i) Consideration of the instant application for voluntary dismissal of the Boehm action in connection with and simultaneously with the pending proceedings for settlement of the Herbst action.

(ii) In the event the application for dismissal and/or settlement are denied, conducting any joint further pre-trial proceedings and/or trial of the two cases.

We do not request that there be a consolidated caption or consolidated pleadings. Separate pleadings in the Boehm derivative action would appear to be more appropriate and the case could bear a double caption such as appears on the present notice of motion and on this affidavit. Parties, however, should be required to use the double caption in all matters and give notice to counsel in both cases in respect of any action to be taken in either.

6. The problem presently before the Court is whether the Herbst action should be settled on the terms set forth in the proposed settlement and whether the Boehm action should be dismissed, and if dismissed, whether such dismissal should purport to bar other similar cases. The object of this motion to consolidate, insofar as the settlement and dismissal are concerned, is to facilitate the joint and simultaneous determination of those questions leaving to the Court only the substantive question of whether the interests of justice are served by such settlement and dismissal. In the event the settlement and dismissal does not occur, we

request that any pre-trial proceedings be conducted jointly in order to save time and expense and that discovery materials in either case be usable in the other. Such purpose would also be served by a joint trial. In the event that the settlement and dismissal are approved, a derivative action will remain against Lazard in the right of ITT. The consolidation would serve the further purpose of making it possible for all possible claims over against Lazard by ITT to be prosecuted against Lazard in the same manner as if ITT had asserted them as cross-claims in the first instance. This is particularly directed at Lazard's possible common law liability to ITT for failure to fulfill its obligation as advisor-agent to inform ITT of material facts relating to the ITT-Hartford-Mediobanca transactions (see Point III, infra).

We see no reason why any of the parties to any of the litigations should object to consolidation to achieve the objectives set forth as it will avoid needless duplication of time and effort.

II. VOLUNTARY DISMISSAL OF THE BOEHM CLAIMS AGAINST THE INDIVIDUAL DIRECTOR-DEFENDANTS

7. After a review of a considerable body of material, my firm has reached the conclusion that the derivative claim

by ITT against the individual director-defendants should be dropped. The reasons are:

(i) There is, in our opinion, no reasonable prospect of a recovery against said individual defendants.

(ii) The continued assertion and prosecution of the case works to the detriment rather than the possible benefit of ITT's interest.

My firm's inquiry into the facts reveals no evidence whatever that the directors were acting in any interest other than that of ITT in connection with the Hartford transaction and the Mediobanca arrangements. There had been no evidence of a personal conflict of interest on the part of the directors other than Mr. Rohatyn, who falls into a somewhat different category because of his membership in Lazard. Except as aforesaid, there has been no proof that any director derived a personal gain out of the events in controversy other than perhaps as a shareholder of ITT. Thus, as to all except Mr. Rohatyn, we have neither self-dealing, divided loyalty or personal gain and, of course, no combination of any of the foregoing.*

* As to Mr. Rohatyn, we request that the action not be dismissed against him insofar as he is a partner in Lazard or insofar as he has a liability for failure to disclose to ITT matters known to Lazard but not known to ITT. This is, in essence, consistent with the basis upon which he is to be released under the revised terms of the Herbst settlement.

8. The question then becomes whether these individual directors should be held liable for having pursued ITT's interest in some improper way. Neither the memorandum of the IRS revoking the Hartford ruling nor any other of the materials reviewed in our inquiry into the facts disclosed any misconduct on the part of ITT's directors. What does appear (giving the utmost latitude to negative suspicions) is that in handling a very large and difficult transaction in which a divestiture was necessary in order to secure certain tax consequences, the ITT management had a "balancing act" to perform of trying to effect the divestiture, while at the same time seeking to maintain the maximum possible economic advantage for ITT. This was a legal and tax problem in respect of which the ITT directors relied to a great degree upon professionals on ITT's staff and upon Lazard who found Mediobanca and agreed to perform certain services under the agreement between ITT and Mediobanca. It is noteworthy that in revoking its ruling, the IRS premised its position on an extensive presentation to the effect that the ruling was erroneous as a matter of law even on the basis upon which it was made. In effect, the government announced a change of mind. Since a ruling may not be revoked on such a basis, the IRS goes on to find that the transactions as consummated did not conform in certain respects to the factual basis in

the application for the ruling and that certain elements in the relationships between the parties were not disclosed in the application for the ruling. (See IRS Mem. March 6, 1974 at p. 107.) Reviewing the facts relating to the alleged non-conformity of the transactions to the ruling and the alleged non-disclosures, we sincerely question their substantiality. In any case, we do not believe that they are such as would provide a basis for liability of the individual directors to ITT. They appear to have resulted from an understandable aggressiveness on the part of ITT's management in pursuing the company's interest. The swing between the possible market losses to ITT in the Hartford stock which might have occurred on an outright sale in early October 1969 and the financial consequences of the Mediobanca transaction as consummated runs into the tens of millions of dollars. The legal staff and financial management of ITT appear to have strained in good faith to structure a complex divestiture which would satisfy the IRS and in which ITT would not come out the loser. In these circumstances, I do not believe that an attempt to make the individual directors guarantors of the success of these management efforts is litigation which has much prospect of success.

The Boehm complaint also sought to attack the tax indemnity offer made by ITT in 1974 to the former Hartford shareholders. However, this claim was premised upon the assumption that ITT management was making the offer in order

to cover their own personal derelictions (see Boehm Complaint, ¶¶ 18 and 19). Absent a meaningful case against the directors individually, I believe the Board's action in 1974 in offering the indemnity was a fair exercise of business judgment in doing what was necessary to prevent attempts to divest ITT of Hartford and to honor what was, for practical purposes if not in language, a covenant that the transaction would have the tax attributes set forth in the Exchange Offer. I therefore believe that this portion of the Boehm complaint fails when the case against the directors is abandoned.

9. In an ordinary case, there might be some possibility of financial gain to ITT in doggedly pursuing a derivative claim against the directors even if prospects of recovery were not great. However, in the instant case, it appears that pursuing such a claim is contrary to the corporate interest. The principal reason given by the corporation for settling the Herbst action is so that ITT will not have to try the underlying factual issues involved in the tax cases in any forum other than the tax cases themselves. Derivative claims against the directors raise most of the underlying issues which will come up again in the tax cases. The corporation will thus be in the anomolous position of having some self-appointed champion of the shareholders making and trying to prove assertions which may fall far short of establishing directors' liability, but may, nevertheless,

embarrass or hurt the corporation in the tax case. This is not a role which my firm wishes to pursue.

10. The termination of the derivative litigation would also end the continuing drain on the corporation's economic resources and management's time which such litigation causes. Under applicable indemnity provisions of the By-Laws and Delaware law, the expenses of the directors, including counsel fees, are borne on a current basis by the corporation and will be ultimately borne by the corporation unless there is a judgment against the directors and a finding by Chancery that they did not proceed in good faith. I am advised that a committee consisting of independent members of the Board of Directors, acting on advice of legal and financial counsel, has concluded that termination of the derivative claim against the directors without any recovery is in the best interests of the corporation.

11. At the settlement hearings on June 4, 1976, counsel for plaintiff shareholders in other derivative cases asserted that the derivative claims had substantial merit and prospect of success and should not be foreclosed. I call upon them to make such a showing and I assume that they will have the opportunity to do so either in further proceedings under the Herbst settlement or in proceedings held pursuant to a new notice under Rule 23.1 on the instant application if the Court deems that notice already given the ITT

shareholders of the proposed release of the ITT directors in the Herbst action is not sufficient for purposes of the instant motion under Rule 23.1.

III. THE CLAIM AGAINST LAZARD

12. Plaintiff Boehm is prepared to proceed with ITT's derivative claim against Lazard which we believe has prospect of success and the prosecution of which presents no apparent detriment to the corporation. In our view, there is evidence that Lazard had knowledge of certain matters which it did not communicate to ITT or did not communicate with sufficient timeliness and clarity to be useful. These related to an apparent relationship of long standing between Lazard and Mediobanca and communications from Mediobanca relating to which of the payment options for the Hartford shares would be exercised by Mediobanca. Considering the role of Lazard as financial advisor or consultant to ITT in connection with the Hartford and many other ITT acquisitions, the substantial fees made by Lazard from ITT in connection with the Hartford and other transactions, it appears to us that Lazard failed in its obligation to ITT in not bringing these matters to the attention of ITT's management at a time when corrective measures could have been taken to either restructure the transaction or make certain of its elements more clear to the IRS. Wholly apart from the more difficult question of whether

Lazard bears a responsibility for the possible loss to ITT arising from the Herbst action and the tax indemnity, there is a separate question of whether Lazard should not be required at least to pay over to ITT all of its fees, commissions and/or profits related to these transactions. We do not think that this is a complicated case to try and are prepared to do so upon the discovery already had in the Herbst action and upon such other evidence as is presently available.

WHEREFORE, it is respectfully requested that the motion be granted.

MILTON S. GOULD

Sworn to before me this
1st day of June, 1976.

Notary Public

UNSIGNED TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE, ON NOTICE, PURSUANT TO RULE 65 FED.R.CIV.P., ENDORSED "DENIED" CONNER, J., NOVEMBER 3, 1976 (pp.A183-A185)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LOUIS BLECKER, et ano,

Plaintiffs,

-against-

LAZARD FRERES & CO., et al,

Defendants.

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73 Civ. 4057 (WCC)

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION

Upon the motions presently pending before this Court, for leave to file an amended and supplemental complaint and to vacate the stay of the action filed May 28, 1976 and July 27, 1976 respectively, the opinion and order of the Hon. M. Joseph Blumenfeld, in Herbst v. ITT et al, Civ. No. 15,155, United States District Court, District of Connecticut, dated August 11, 1976, and the affidavit of Mathias L. Spiegel with exhibits annexed thereto, dated October 15, 1976, it is

ORDERED that the defendant ITT, its agents, servants, employees and attorneys, and all persons in active concert and participation with it be and are temporarily

restrained from making or performing any agreements or engaging in any proceedings which are intended to release or prejudice any rights or causes of actions which plaintiffs herein are seeking to assert derivatively in this Court on behalf of said defendant corporation, it having refused to act on its own behalf, during the pendency of the motions referred to above; and it is further

ORDERED that the defendants show cause before the Honorable William C. Conner, a Judge of this Court, in Room , United States Courthouse, Foley Square, New York, New York on the day of October, 1976 at or as soon thereafter as counsel can be heard why an order pursuant to F.R.C.P. 65 (a) should not be made herein

a) Preliminarily enjoining defendant ITT, its agents, servants, employees and attorneys, and all persons in active concert and participation with it from making or performing any agreements or engaging in any proceedings which are intended to release or prejudice any rights or causes of actions which plaintiffs herein are seeking to assert derivatively in this Court on behalf of said defendant corporation, it having refused to act on its own behalf; and further

b) Enjoining each of the defendants from using as a defense in this action, any judgment which may be entered in Shapiro v. Black, et al, Supreme Court, New York County, upon a stipulation of settlement not negotiated with plaintiffs herein or their representatives.

IT IS FURTHER ORDERED, that service of a copy of this Order and the papers upon which the same is granted upon the defendants or their attorneys on or before October , 1976 by P.M. shall be sufficient service of this order.

Done at the United States Courthouse, New York, New York this day of October, 1976.

UNITED STATES DISTRICT JUDGE

OPINION AND ORDER, BLUMENFELD, J., DATED AUGUST 11, 1976 IN HERBST ACTION, ANNEXED TO APPLICATION FOR RELIEF PURSUANT TO RULE 65 FED. R. CIV. P. (pp. A186-A211)

FILED
AUG 11 2 00 PM '76
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

HILDE HERBST and AARON M. FINE :

v. : CIVIL NO. 15,155

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, ET AL. :

RULING ON PROPOSED STIPULATION OF SETTLEMENT

This case is a class action, brought under the federal securities laws on behalf of those shareholders of the Hartford Fire Insurance Company (Hartford Fire) who exchanged their common stock for Cumulative Preferred Stock, $2.25 Convertible Series N of the International Telephone and Telegraph Corporation (ITT) during the spring of 1970. The defendants are ITT, its directors at the time of the exchange offer, and Lazard Freres & Co., the dealer-manager for the exchange.

I. History

The exchange offer was the culmination of ITT's efforts to acquire control of the Hartford Fire Insurance Company. During 1969 ITT attempted to arrange a merger with Hartford Fire. As part of that effort ITT sought and obtained a ruling from the Internal Revenue Service (IRS) concerning the proposed merger's federal income tax consequences for the shareholders of the Hartford Fire Insurance Company. That revenue ruling stated that the merger would be a tax-free reorganization with no recognition of gain or loss by the Hartford Fire shareholders, provided that ITT unconditionally disposed of the Hartford Fire stock it had acquired for cash prior to the merger. A supplemental ruling by the IRS stated that the proposed contract for the sale of that stock between ITT and an Italian bank, Mediobanca Bancadicredito Finanziaro - Societa Per Azioni, satisfied the requirement of an unconditional disposition of the stock by ITT. Late in 1969 the merger plans fell through, when the Insurance Commissioner of the State of Connecticut rejected the proposal. Rather than abandon its attempt to obtain control of Hartford Fire, ITT proposed a voluntary exchange offer to Hartford Fire shareholders. This offer was approved by the Insurance Commissioner

and became effective when over 99% of the Hartford Fire common stock was exchanged.

The plaintiffs' claim in this case arises from the exchange offer. Specifically, they allege that ITT misled the IRS regarding the sales agreement with Mediobanca. Plaintiffs allege that, instead of transferring its Hartford Fire shares outright, ITT maintained control over their disposition and use through a separate arrangement with Lazard Freres, which had introduced Mediobanca as a possible purchaser of the shares, and that Mediobanca assumed none of the risks of ownership. Plaintiffs claim that this arrangement, not disclosed to the IRS or the Insurance Commissioner, vitiated the revenue rulings and the Insurance Commissioner's approval of the acquisition.[1/] Plaintiffs also contend that the prospectus which ITT sent to Hartford Fire shareholders in connection with the exchange offer misrepresented that ITT had unconditionally disposed of its Hartford Fire shares. Plaintiffs' claim is that this misrepresentation and non-disclosure renders ITT liable for damages to compensate them

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1/ In fact, the IRS revoked its rulings in this case on March 6, 1974, and has sought to assess taxes against the plaintiff class.

for the risk that the exchange might be a taxable event, and for any taxes assessed against them.

II. Proposed Settlement

The issue now before me is the fairness of a proposed stipulation of settlement, executed by counsel representing all parties. After notice by publication and first class mail to all former Hartford Fire shareholders and all current ITT shareholders,[2/] a fairness hearing was held on June 4, 1976, as required by Rule 23(e), Federal Rules of Civil Procedure.

The settlement proposal provides that members of the plaintiff class will have two options regarding their recovery. They may elect to take a flat payment of $1.25 per share (payable in ITT common stock), or they may choose to obtain a judgment against ITT, requiring it to reimburse any tax liability incurred as a result of the Hartford Fire/ITT Series N Preferred stock for stock exchange.[3/] The entire

2/ Pursuant to Federal Rules of Civil Procedure 23(e) and, purportedly, 23.1. Sidney Silverman's Affidavit of Compliance With Orders, June 2, 1976.

3/ Reimbursement would be necessary, of course, only if the Internal Revenue Service's claim that exchanging shareholders must recognize gain or loss on this transaction is eventually upheld.

cost of this settlement--estimated at between $23 and $35 million, depending upon the elections made and the outcome of the tax litigation--will be borne by ITT. The defendants, in return, will be released from any further claims by members of the plaintiff class, as set forth in the stipulation of settlement and the Proof Of Claim And Release attached to the stipulation. In addition, the stipulation provides that ITT will issue broad, general releases to all of its present directors and all director-defendants,

> "discharging them, and each of them, from any and all claims, demands, and causes of action which have been or which might have been asserted on behalf of ITT against such persons in connection with or arising out of any of the matters, transactions and occurrences recited, described or referred to in the pleadings and proceedings herein." 4/

4/ Paragraph 17 of the Stipulation of Settlement. Paragraph 20(c) provides that, in addition to the named defendants,

> "all of their present and former directors, officers, employees, partners, agents and attorneys [will be discharged] from all claims, demands and causes of action which plaintiffs and each member of the class . . . have or may have . . . ."

As the stipulation further recites, counsel for the directors intend to use these releases in seeking dismissal of the various shareholder derivative actions based on these "matters" which are now pending in this and other courts.[5/] The stipulation also provides that the counsel fees and expenses of plaintiffs' attorneys will be paid by ITT, also in ITT common stock, subject to ITT's reserved right to be heard with respect to the fee application prior to this court's ruling on the application.[6/]

Although both parties have made concessions to achieve a peaceful settlement, the stipulation explicitly provides that the proposed compromise may not be construed as either "an admission of lack of merit in this action" on the part of plaintiffs or "an admission of any liability or wrongdoing whatsoever, or that any of the allegations of the complaint are true" on the part of defendants. The plaintiffs decided

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5/ The cases listed in paragraph 17 are:

Boehm v. R.E. Bennett, et al., 74 Civ. 1132 (WCC) (S.D.N.Y.);*
Shapiro v. E.R. Black, et al., (Sup. Ct., N.Y. Co.);
Auerbach v. Pomeroy Day, et al., CA 4481 (Del. Ch.);
Blecker v. Lazard Freres & Co., et al., 73 Civ. 4057 (WCC) (S.D.N.Y.).

*Boehm has been transferred to this court, and is now pending before me as Civil No. H76-215.

6/ Plaintiffs' counsel have submitted their fee application, and ITT has exercised that right. Resolution of this claim will await further developments in the case.

to accept the compromise in the face of the risks of litigation, and their conclusion, after discovery, "that no evidence has been adduced in this case which would sustain a claim against the Director-Defendants and . . . that all actions taken by the Director-Defendants were taken for the benefit of ITT . . . ." ITT's rationale for settling this case with the plaintiffs, and issuing the releases to the directors as well, is that it may thereby be free to litigate the taxability of the exchange in a different forum where the Internal Revenue Service is a party, without incurring the collateral estoppel risks implicit in any earlier ruling, here or in one of the derivative lawsuits. ITT is actively conducting that litigation now, on behalf of the exchanging Hartford Fire shareholders, pursuant to its promise to reimburse them for any tax liability assessed on the exchange. There is no advantage to the corporation or its directors in ending this case but simply shifting the trial on the taxability of the exchange to one of the derivative lawsuits. This is the stated reason for the release of the directors in this proposed settlement, and why the Special Committee appointed by ITT's Board of Directors concluded that the settlement and

releases should be approved.[7]

III. Objections

At the hearing two different types of objections were made to the proposed stipulation of settlement. The first, raised by members of the plaintiff class, involved the nuances of the tax reimbursement method of recovery. Those problems were, in large measure, resolved at the hearing.[8] The other objections were raised by ITT shareholders who are not members of the plaintiff class, but who are plaintiffs in derivative

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[7] Of course, implicit in this analysis is a conclusion that both this case and the shareholder derivative actions turn on the actual taxability of the exchange. Whether or not that is so need not, however, be resolved at this time. That question was argued before me November 3, 1975, on defendants' motions for summary judgment and partial summary judgment. At the request of counsel, a decision was put off when the court was informed of the brightening settlement prospects.

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[8] It is now agreed that the tax reimbursement option includes the reimbursement of all state and local taxes which are "piggybacked" on one's federal income taxes. It also provides for reimbursement of any interest which may be due, and extends to the reimbursement of "tax due upon taxes," should the reimbursement payments themselves prove to be taxable income to the recipients. Furthermore, the parties agreed that the July 6, 1976 deadline for making an election between the two methods of recovery, by filing the Proof Of Claim And Release, would be extended at least until 60 days following this court's ruling on the proposed stipulation of settlement. Finally, the parties also agreed that no claim need be filed at this time by those class members choosing to avail themselves of the tax reimbursement recovery option. This concession was made by ITT to preserve the intent of its letters of March 11 and April 4, 1974, promising to reimburse the Hartford Fire shareholders for any tax liability they eventually incur as a result of the exchange.

suits against the ITT directors, and others. They strenuously opposed the provisions of the stipulation by which ITT would issue releases to the various director defendants, on grounds that these releases would--or could--effectively terminate their lawsuits. I shall return to this issue after an evaluation of the fairness, adequacy and reasonableness of the proposed stipulation of settlement.

The considerations which must control my responsibility under Rule 23 were well stated by Judge Moore in City of Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir. 1974). The factors relevant to this case include the complexity of the litigation, the reaction of class members, the stage of the proceedings, the risks of establishing liability and damages, and, in light of those risks and the scope of the possible recovery, the reasonableness and adequacy of the settlement fund. 495 F.2d at 463.

The nub of plaintiffs' claim is that ITT and the other defendants violated the federal securities laws by their omissions and misstatements concerning the true nature of the ITT sales agreement with Mediobanca, and with respect to agreements between Mediobanca and Lazard Freres & Co.

As a result, plaintiffs claim that they were subjected to the risk that the IRS might discover the truth, revoke its

rulings, require them to recognize the gain or loss they realized upon the exchange, and assess federal income taxes on those amounts. Plaintiffs have advanced two admittedly inconsistent theories of damages. First they seek to recover the increase in value ITT would have been forced to offer Hartford Fire shareholders in order to induce them to exchange their stock, in light of the risk that taxes might be imposed on their capital gains realized on the exchange; second, they seek to recover the actual tax liability eventually incurred by the class members.[9/]

Stating the issues presented for litigation in this fashion sufficiently illustrates the nature of the case and the risks as to liability and damages. The liability issues involve the traditional elements of a federal securities fraud case, with the possible addition of an intricate tax question. The damages on the first theory of recovery can be determined all at once, on the basis of evidence common to each member of the class concerning the "value" ITT would have had to add to the exchange offer to compensate the plaintiffs for their

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9/ These two theories of recovery are mirrored by the two recovery options offered in the stipulation of settlement.

risk of federal income tax assessments.[10/] The second theory would require more individualized treatment, but one's tax assessment would be easily demonstrable. In fact, damages on that basis might prove to be calculable through a special master arrangement, not dissimilar to the claims review procedure contemplated by the stipulation of settlement. The trial time on both liability and damages, therefore, would be unlikely to exceed one month. Furthermore, discovery has advanced quite far, except with regard to ITT's request for disclosure from the IRS.[11/] Thus the judicial energy saved by this settlement does not begin to compare to the herculean task Judge Metzner faced in the City of Detroit case.

However, the plaintiffs face several major hurdles between their present situation and any ultimate recovery. The defendants' liability is far from clear, despite the IRS action. To establish liability the plaintiffs would have to demonstrate not only that the events surrounding ITT's dis-

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10/ Plaintiffs' counsel indicated his intention to introduce the testimony of Mr. Martin J. Whitman on this point. Affidavit of Sidney Silverman In Support of Settlement and Application For Fees, May 28, 1976, paragraph I.(g).

11/ That question is also pending before me and, like the summary judgment motions, has been deferred because of the settlement possibilities.

position of the Hartford Fire shares precluded or endangered tax-free treatment for the exchange, but also establish that this information was material, and that ITT and the other defendants acted with the requisite state of mind. See TSC Industries, Inc. v. Northway, Inc., 44 U.S.L.W. 4852 (U.S. June 15, 1976), and Ernst & Ernst v. Hochfelder, 44 U.S.L.W. 4451 (U.S. Mar. 30, 1976). ITT has stoutly denied both the taxability of the exchange and the securities law liability; it continues to do so.

Plaintiffs would also be required to establish damages. Their expert witness is prepared to testify that, if the exchange had not been tax free, ITT would have had to sweeten the exchange offer by $5 per share to induce the Hartford Fire shareholders to tender their stock.12/ No evidence has been offered to support a greater recovery, and this figure is consistent with plaintiffs' claims throughout the litigation. ITT's response has been threefold: first, it would simply not have paid any more for the Hartford Fire shares; second, the offer made was already higher than the market price of Hartford

12/ Affidavit of Sidney Silverman In Support of Settlement and Application For Fees, May 28, 1976, paragraph I. (g).

Fire at any time in its history; and third, the dividends on the Series N Preferred were to be higher, and safer, than were those on the Hartford Fire common stock.

The amount of damages which can be recovered, therefore, is also not clear-cut. The recovery to the class under the first option in the settlement is 25% of their maximum possible recovery. The second theory depends upon the actual taxability of the exchange, which, as noted above, ITT still contests. Here, however, the class will recover 100% of the maximum possible recovery, because the settlement provides that those who elect that option will be fully reimbursed for any tax liability incurred.[13/] In addition, ITT will pay the counsel fees of the plaintiff class.

The final consideration is the reaction of the class members. Fortunately for the court, that part of the fairness equation is clear--the class favors the proposed settlement.[14/] The major objections, apart from the issue of counsel fees

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13/ The proposed stipulation of settlement incorporates ITT's pledge to pay the "net tax liability" incurred by exchanging Hartford Fire shareholders into a judgment, and clarifies some of the terms of that promise.

14/ This conclusion is based on the court's review of all correspondence submitted in response to the notice to the class, as well as the testimony and legal arguments made at the June 4, 1976 hearing. The court takes this opportunity to commend plaintiffs' counsel on their excellent job of servicing and assisting the members of the class with regard to their claims and questions.

alluded to earlier, concerned aspects of the tax reimbursement recovery option which, as noted above, have now been resolved to the satisfaction of the objecting class members. Taking into account the risks of litigation as to both liability and damages, in light of the strengths and weaknesses of plaintiffs' case, it is my conclusion that the proposed stipulation of settlement is fair, reasonable and adequate, with respect to the plaintiff class.

Fairness to the plaintiff class is not, however, the only criterion by which the proposed stipulation of settlement is to be judged. Because of the clauses providing for the release of ITT's claims against its present and former directors, the interests of ITT and its shareholders must also be considered.[15/] The dispute over these releases concerns the

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15/ In this inquiry the court has had the assistance of a number of able counsel, among them some of the most eminent attorneys in the country. The corporation, inside directors, outside directors, and director Felix Rohatyn (and his firm Lazard Freres & Co.) each have separate counsel. The ITT shareholders are represented by the counsel handling the several derivative actions now pending in this and other courts. The presence of separate counsel on behalf of the ITT shareholders is particularly important in light of Judge Friendly's comment in Alleghany Corp. v. Kirby, 333 F.2d 327 (2d Cir. 1964), aff'd by an equally divided court, 340 F.2d 311 (2d Cir.) (en banc), cert. granted, 381 U.S. 933 (1965), cert. dismissed, 384 U.S. 28 (1966):

"I cannot at all agree with the implication in

effect they might have upon the pending derivative actions. Despite the tempting suggestion that I leave this worry to those courts,[16] I believe I must consider the overall impact

15 cont. my brother MOORE's opinion that standard procedures for the approval of settlements afford sufficient safeguards in the 'big' case, or that they did in this one. The plaintiff stockholders or, more realistically, their attorneys have every incentive to accept a settlement that runs into high six figures or more regardless of how strong the claims for much larger amounts may be. . . . Once a settlement is agreed, the attorneys for the plaintiff stockholders link arms with their former adversaries to defend the joint handiwork . . . ."

333 F.2d at 347.

16/ As was apparently done in Delahanty v. Newark Morning Ledger Co., 26 F. Supp. 327, 328-29 (D. N.J. 1939), where the court stated:

> "Much argument has been injected into the issue of dismissal on account of the results of res adjudicata [sic] which may accrue in other proceedings pending presently between the parties or which may be in contemplation. This argument projects the issue into the speculative and requires this court to anticipate premises and questions which may or may not arise in the future. If, as and when they do arise the effect of the dismissal here must be viewed by the forum in which the new issues are created."

I cannot take that tack in this case, in part because of the provision in paragraph 20(a) of the stipulation of settlement that this court's judgment provide for the retention of jurisdiction to effectuate the proposed releases. This buck will not be so easily passed.

of the proposed settlement. I base this conclusion upon Judge Friendly's observation in Wolf v. Barkes, 348 F.2d 994, 997-98 (2d Cir.), cert. denied, 382 U.S. 941 (1965):

> "Of course, the corporation and a defendant have much to gain by having their settlement approved by the court under rule 23(c). After a judicial finding that the settlement is just, following full disclosure and opportunity for stockholders to contest, it will not be easy later to attack the settlement and show that its signers abandoned corporate claims through neglect or self-dealing."

and the decisions in Stella v. Kaiser, 218 F.2d 64 (2d Cir. 1954), rehearing denied, 221 F.2d 115 (2d Cir.), cert. denied, 350 U.S. 835 (1955), and Masterson v. Pergament, 203 F.2d 315 (6th Cir.), cert. denied, 346 U.S. 832 (1953), terminating shareholder derivative actions.[17/]

17/ Judge Clark's view in Stella, not shared by Judges Frank and L. Hand, was that the court's approval of a compromise under Rule 23 bound all members of the derivative class, and that this was how the Michigan settlement was able to terminate the New York lawsuit. 218 F.2d at 67. See also Judge Allen's dissent in Masterson, lamenting the result that the apparently last-minute pleading amendments were permitted to terminate shareholder derivative actions pending in five other state or federal courts. In both those decisions, of course, the settlement involved the termination of shareholder derivative actions by virtue of the settlement of one identical action between the same parties. Here the effect of the class action settlement on the derivative actions is therefore not as easily predictable. Nevertheless, the risk exists that the releases, if approved by this court, would be held to end the derivative lawsuits. Cf. Wolf v. Barkes, quoted above in the text.

The derivative plaintiffs, shareholders of ITT, who object to the proposed releases assert claims in their own lawsuits which are offshoots of the transactions underlying this case. However, the causes of action presented in their suits are separate and distinct from those asserted by the plaintiff class in this case. Quite apart from whether ITT's attempt to divest itself of those shares of Hartford Fire which it already owned met the statutory requirements for a tax free exchange is the question whether, in the steps taken, the directors breached fiduciary duties owed to the corporation. The second question is presented in the derivative suits which allege, inter alia, that the directors violated their fiduciary duties to the corporation by permitting Lazard to dispose of the Series N Preferred stock (obtained in exchange for the ITT-owned Hartford Fire stock) to its close associates, for an amount far less than its fair value, and to share in the fees paid to Mediobanca for its role in these transactions.

In Boehm v. Bennett, Civil No. H76-215 (D. Conn.), the plaintiffs seek to shift the settlement or recovery costs of this case from ITT to its directors, because of their asserted breaches of fiduciary duty. See generally Diamond v. Oreamuno,

24 N.Y.2d 494, 248 N.E.2d 910 (1969). Shapiro v. Black, pending in the New York County State Supreme Court, and Blecker v. Lazard Freres & Co., 73 Civ. 4057 (WCC) (S.D.N.Y.), raise this same claim. Indeed, the plaintiff in Shapiro seeks an injunction preventing ITT from reimbursing the taxes of or paying damages to the Herbst class.[18/] Furthermore, the derivative lawsuits involve parties not in this case as plaintiffs or defendants. Most importantly, the shareholders of

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18/ There are other claims presented in these and other lawsuits based on these transactions which apparently will not be directly released if the stipulation of settlement is approved. In this category apparently fall, for example, the claims against Felix Rohatyn and Lazard Freres & Co. in Boehm and Auerbach v. Brown, Civil No. 10865/73 (Sup. Ct., Westchester Co.), or against Dreyfus and the other defendants in Blecker and Bernstein v. Mediobanca, 73 Civ. 3549 (WCC) (S.D.N.Y.). Boehm and Auerbach seek to recover, for ITT, the fees received by Lazard from Mediobanca, as Lazard's share of the fee paid by ITT to Mediobanca. Bernstein and Blecker seek to recover, also for ITT, the profit it lost because the shares of ITT it received in exchange for the Hartford Fire shares it had sold to Mediobanca were resold (pursuant to options) well below the then-prevailing market price. However, as indicated at the hearing, these cases may be terminated by a vote of the newly-immunized (and hence impartial) Board of Directors of ITT, based on their conclusion that it would be unwise for the corporation to pursue the claims asserted in these cases. This is the problem of the "business judgment" defense to which reference is made in many of the objecting papers filed in this court.

ITT are not parties in Herbst; they are a separate class. See Rule 23.1, Federal Rules of Civil Procedure. In addition, Mediobanca is a defendant in Shapiro, and two European entities, Les Fils Dreyfus Et Cie, S.A. and Lazard Freres Et Cie, are defendants in Blecker. Thus, this court presently lacks either personal or subject matter jurisdiction over any of the shareholder derivative actions, with the exception of Boehm.

However, the plaintiffs and defendants in Herbst have offered several innovative solutions to these jurisdictional problems. The doctrine of ancillary jurisdiction was suggested as a way to bring in the missing parties, but, as the Supreme Court recently noted in Aldinger v. Howard, 44 U.S.L.W. 4988 (U.S. June 22, 1976), that doctrine has only been invoked to permit the addition of new parties when the court's jurisdiction is in rem. 44 U.S.L.W. at 4991. We do not have such a situation here. Similarly, the transfer of Boehm v. Bennett from the Southern District of New York to this court does not solve the problem of jurisdiction as to the parties or causes of action missing from Herbst itself. In an appropriate situation one cause of action may complement another, but this does not coalesce the two into one.[19/] Nor does the simple

19/ No one would contend that the presence of one case on a court's docket permits that court to resolve the claims involved in it as part of a different case, involving different parties and different causes of action, even though both cases arose out of the same transaction. The motions to consolidate Boehm with Herbst, while they might obviate the jurisdictional problems I perceive, would not resolve the fairness issue I address infra.

inclusion of the release proposal in the proposed stipulation of settlement do more than present it to this court for its consideration, without in any way giving the court jurisdiction over the parties or causes of action necessary to "effectuate" those releases.[20/] The suggestion was also made that this court's issuance of the show cause order to all ITT shareholders somehow brought them before it, for purposes of their derivative claims against the directors of ITT. That argument is also without merit, for mere notice pursuant to Rule 23 or 23.1 cannot confer jurisdiction upon the court where none existed previous to the issuance of the notice. Rule 82, Federal Rules of Civil Procedure. Cf. Snyder v. Harris, 394 U.S. 332, 337-38 (1969).[21/]

Finally, the suggestion was made that the issue presented may simply be viewed as a question of contribution among alleged joint tortfeasors, and that the court surely has jurisdiction to resolve that claim as part of this settlement. There are two possible responses to this point.

20/ Paragraph 20(a) of the Stipulation of Settlement.

21/ In Cohen v. Young, 127 F.2d 721 (6th Cir. 1942) the Court of Appeals held that it had jurisdiction because the show cause order issued to shareholders of the corporation on whose behalf the suit was brought made such shareholders parties. 127 F.2d at 724. The shareholder/appellant there was a member of the plaintiff class in the derivative action. Of course, the ITT shareholders objecting here are not members of the plaintiff class in Herbst, so the show cause order could not make them parties as it did in Cohen.

First, the question of contribution is pending in the derivative actions, not in this one. Although the possibility of filing third party complaints has existed, neither ITT nor any of its directors have chosen to exercise their rights to do so. Rather, the defendants have thus far maintained a united front, opposing the plaintiffs but not quarreling among themselves. Simply stated, the result of their restraint is that there is no "case or controversy" regarding this issue before me in this case. Wainwright v. Kraftco Corp., 53 F.R.D. 78 (N.D. Ga. 1971). The issue of contribution is thus not in this case, and this court therefore lacks jurisdiction to approve and effectuate the proposed clauses which purport to resolve that issue through the issuance of releases.

Alternatively, if the contribution issue is properly before me at this stage under federal law, compare Altman v. Liberty Equities Corp., 54 F.R.D. 620 (S.D.N.Y. 1972) and Globus v. Law Research Service, Inc., 318 F. Supp. 955 (S.D. N.Y. 1970), aff'd mem., 442 F.2d 1346 (2d Cir.), cert. denied, 404 U.S. 941 (1971) with Wainwright v. Kraftco Corp., 53 F.R.D. 78 (N.D. Ga. 1971) and Reichlin v. Wolfson, No. 66 Civ. 3111

(S.D.N.Y. June 1, 1972),[22] it is my conclusion that it would not be appropriate to approve the issuance of the proposed releases.

Although it was noted in Percodani v. Riker-Maxson Corp., 50 F.R.D. 473 (S.D.N.Y. 1970) that:

> "the release of non-contributing defendants through a settlement agreement is no reason for disapproving the compromise . . ." (citing Glicken v. Bradford, 35 F.R.D. 144 (S.D.N.Y. 1964))

this statement ignores the fact that the federal-law right to

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[22] This decision was submitted to this court as Exhibit B of the Annex To Brief For Objector Morris Shapiro. There Judge Brieant indicated that, in his view,

> "[a]s between the members of the class and the defendants, the liability is joint and several. Plaintiff, if successful, could collect the judgment entirely against the corporation. Nothing prevents the plaintiff class from settling the litigation solely with the corporation.
>
> "The equities between the 'individual wrongdoers' and the corporation, if there are any, arising out of their conduct of the corporate affairs in 1965, are matters to be determined in a plenary shareholders' derivative action before the Chancery Court of Delaware having jurisdiction over the corporation, or in any other forum having proper jurisdiction and venue. In such action, it may be determined whether the individual defendants or any of them, should contribute in any way to the sums MCS must pay these creditors, and the final order to be entered here will not determine that issue."

contribution, first recognized in Globus, could be eliminated if the releases are approved.[23/] Such broad release provisions should be avoided even where there is some contribution from the benefiting defendants, "unless there is no basis for believing that there are any other claims." Winkelman v. General Motors Corp., 48 F. Supp. 490, 496 (S.D.N.Y. 1942). Here there is no contribution proposed, and these claims are being pressed in the derivative actions.

Nevertheless, the defendants argue that issuance of the releases is proper, and cite several cases in support of that proposition. In Kahn v. Kaskel, 367 F. Supp. 784 (S.D.N.Y. 1973), however, the cooperative's release of its sponsor did not purport in any way to eliminate the claims of the class action plaintiffs. Rather, their individual causes of action against the sponsor (if any existed) were explicitly preserved, and the sponsor agreed to indemnify the cooperative as to any claims arising out of the class action. This indemnification agreement, as Judge MacMahon noted, was the equivalent--or better--of any claim over that the cooperative

23/ Objector Morris Shapiro suggests that the releases may extend to Lazard Freres as well, both by the terms of the stipulation of settlement and by virtue of N.Y. Gen. Obligations Law § 15-107 (McKinney 1962). However, paragraph 20(c) does not reach so far, since it only purports to release "partners" of the defendants from the claims of the plaintiff class in Herbst. In light of my decision to withhold approval of the settlement as submitted, I need not resolve Shapiro's concern with respect to the applicability or the effect of the New York statute cited above.

might have against its sponsor. By contrast, the stipulation of settlement in this class action explicitly attempts to extinguish the derivative claims of the ITT shareholders, raised on behalf of their corporation. The court does not need to disagree with defendants' contention that "ITT has the right to settle any claim it may have against its directors"[24/] to reject the clauses of the settlement which involve these releases. The issue is not whether ITT can issue the releases, but whether this court should approve their issuance. And it is that which I decline to do.[25/]

In Altman v. Liberty Equities Corp., 54 F.R.D. 620 (S.D.N.Y. 1972) Judge Tyler refused to approve a settlement proposal which contained an analogous provision--a bar preventing the non-settling defendants from seeking contribution from the settling defendants. Here the proposed releases would prevent the derivative plaintiffs, acting on behalf of

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24/ Memorandum of the defendant-directors of ITT in support of the settlement of Herbst and the dismissal of Boehm, at 15.

25/ If the corporation wants to attempt to settle the derivative actions without the approval of their named plaintiffs, cf. Saylor v. Lindsley, 456 F.2d 896 (2d Cir. 1972); Wolf v. Barkes, 348 F.2d 994, 997 n.4 (2d Cir.), cert. denied, 382 U.S. 941 (1965); and Denicke v. Anglo California National Bank, 141 F.2d 285 (9th Cir.), cert. denied, 323 U.S. 739 (1944), the courts in which those actions are presently pending are the proper fora.

the defendant ITT, from seeking contribution from the defendant directors. Here, as in Altman, the effect is to undercut strong policies favoring the compromise of litigation. However, I conclude, as did Judge Tyler with respect to the situation he confronted, that it would be unjust to cut off the derivative plaintiffs from seeking to vindicate ITT's claims against the directors who allegedly breached their fiduciary responsibilities to the corporation and its shareholders.[26/]

26/ One of the attorneys representing the derivative class, Milton Gould (who represents Boehm in Boehm v. Bennett), stated at the June 4, 1976 hearing that he sees no merit in these claims against the ITT directors. His view is shared by plaintiffs' attorney in this case and, not surprisingly, by the attorneys for the various defendants. The court has no reason to doubt the sincerity of their words, or question the energy with which they have investigated these claims.

However, the proper course for the Boehm plaintiffs to take is to seek dismissal as against the defendant directors in their own case. Notice may then be issued to all ITT shareholders pursuant to Rule 23.1, and this court may scrutinize that record, and require that objecting class members come forward with evidence to support their claims that the case should not be dismissed as to those defendants. Compare Papilsky v. Berndt, 466 F.2d 251, 259-60 (2d Cir. 1972). Those steps are now under way. Herbst is simply not the case in which that evaluation should be conducted.

A True Copy
ATTEST:
SYLVESTER A. MARKOWSKI
Clerk, U. S. District Court
By: [signature]
Deputy In Charge

Accordingly, the proposed stipulation of settlement is not approved. However, the court may be willing to reconsider this decision at a later time, if developments in Boehm v. Bennett or any of the other derivative suits appear to warrant a resubmission of this or a modified settlement agreement.

It is SO ORDERED.

Dated at Hartford, Connecticut, this 11th day of August, 1976.

M. Joseph Blumenfeld
United States District Judge

AFFIDAVIT OF MATHIAS L. SPIEGEL DATED OCTOBER 15, 1976 IN SUPPORT OF RELIEF PURSUANT TO RULE 65 FED.R.CIV.P. (pp. A212-A216)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

LOUIS BLECKER, et ano,

Plaintiffs,

-against-

LAZARD FRERES & CO., et al.,

Defendants

---------- x

73 Civ. 4057 (WCC)

AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE FOR INJUNCTION

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

MATHIAS LLOYD SPIEGEL, being duly sworn, deposes and says:

1. I am a member of the firm of Netter & Spiegel, attorneys for Louis and Ruth Blecker, shareholders in the International Telephone and Telegraph Corporation ("ITT") on whose behalf this action is brought.

2. I make this affidavit in support of plaintiffs' motion to:

(a) enjoin ITT, its directors and agents, from making or performing any agreements intended to release or prejudice any rights or claims asserted in this action against the said directors during the pendency of two motions filed by plaintiffs in this court on May 28, 1976 and July 27, 1976 respectively, and presently sub judicia, and

(b) enjoin each and any of the defendants from using as a defense in this action, any judgment which may be entered in Shapiro v. E. R. Black, et al., Index No. /74, Supreme Court, State of New York,

County of New York ("Shapiro"), and any releases that may be executed and delivered to the directors of ITT in connection with said judgment.

3. Shapiro is a derivative action, the summons and complaint in which were served after the commencement of this action, and never filed in the Supreme Court, State of New York, County of New York. (Exhibit A).

4. This action is one of four related actions presently pending in this District and the District of Connecticut:

Herbst v. ITT, et al., Civ. No. 15,155, D. Conn. ("Herbst")
Bernstein v. Mediobanca, et al., 73 Civ. 3549 (WCC) S.D.N.Y. ("Bernstein")
Boehm v. Bennett , et al., Civ. No. H-76-251 D.Conn. ("Boehm");

all commenced prior to Shapiro.

5. In the afternoon of October 12, 1976, papers ("Settlement Papers"), annexed to the original of this affidavit, purporting to be an amended and supplemental complaint and stipulation of settlement with exhibits in Shapiro, were hand delivered to my office. (Exhibit B).

6. The arrival of the settlement papers and their contents were a surprise to me. Neither I no any member of my firm nor any representative on behalf of plaintiffs had had any discussions with regard to a settlement or our intervention in Shapiro with counsel for any of the defendants or with Abraham L. Pomerantz, Esq., plaintiff's counsel in Shapiro.

7. (a) This action was commenced on September 21, 1973, after the commencement of Bernstein.

(b) Prior to answer on November 16, 1973, ITT moved to stay this action in favor of Bernstein on the ground that the actions were identical.

(c) In an opinion dated December 11, 1976 and by order filed January 14, 1974 the Hon. Charles H. Tenney stayed this action in favor of Bernstein.

(d) On March 6, 1974 the IRS revoked its ruling that the ITT-Hartford merger was a tax-free event.

(e) On March 11, 1974 the complaint in Boehm was filed.

(f) On March 11, 1974 plaintiffs filed an amended complaint, then moved to name the directors of ITT as defendants and to vacate the stay.

(g) By memorandum and order filed May 3, 1974, Judge Tenney permitted plaintiffs to name the directors of ITT as defendants but continued the stay in favor of Boehm.

8. On March 11, 1976 a stipulation of settlement was entered into in Herbst and a hearing on objections to the settlement noticed in the District of Connecticut for June 4, 1976 (Exhibit C).

9. On May 13, 1976 Boehm was transferred from this District to the District of Connecticut on consent (Exhibit D).

10. On May 19, 1976 plaintiffs filed objections to the proposed settlement in Herbst, without attachments. (Exhibit E).

11. Counsel for plaintiff in Boehm, however, did not oppose the proposed settlement in Herbst. (Exhibit F Response of Robert L. Boehm to Notice of Proposed Settlement in Herbst).

12. On May 25, 1976 Lawson F. Bernstein responded in Herbst to plaintiff's objections (Exhibit G - without attachments).

13. On June 2, 1976 I replied in Herbst to Mr. Bernstein's affidavit. (Exhibit H- without attachments).

14. On June 4, 1976, at a hearing on objections to the proposed settlement in Herbst in the United States District Court for the District of Connecticut, I and counsel for Shapiro argued in opposition to the execution and delivery by ITT of releases to its directors; counsel for Boehm argued in support of the proposed settlement.

15. In a notice of motion dated June 21, 1976 plaintiff in Boehm moved to dismiss the claims set forth against the directors of ITT (Exhibit I).

16. In an affidavit dated July 14, 1976 I opposed that motion on behalf of the plaintiffs herein. (Exhibit J).

17. On July 26, 1976 ITT responded stating it had "no opposition to the dismissal of the ITT directors. (Exhibit K).

18. On August 11, 1976 Judge Blumenfeld filed an opinion and order sustaining plaintiff's objections and disapproving the settlement in Herbst as proposed.

19. The proposed settlement in Shapiro is a part of a continuing effort to avoid judicial inquiry into the

claims alleged in this action, as alleged in paragraphs 56-58 and 118 through 143 of the amended and supplemental complaint presently pending before this Court.

20. The releases to be executed and delivered by ITT to its directors in Shapiro, once again, are intended to be used to seek the dismissal of this action. The approval of the said releases sought from the Supreme Court of the State of New York is in direct contravention of the Opinion and Order of Judge Blumenfeld on Herbst.

21. A determination in Shapiro will provide a basis for the dismissal of this prior action. Such an event during the pendency of the proceedings in this Court will be destructive to the jurisdiction and processes of the Court.

For the foregoing reasons it is respectfully submitted that the relief sought should be granted.

Mathias L. Spiegel

Sworn to before me this

15th day of October, 1976

Alan D. Marcus

ALAN D. MARCUS
Notary Public, State of New York
No. 31-2523100
Qualified in New York County
Commission Expires March 30, 1977

SUMMONS AND COMPLAINT IN SHAPIRO V. E.R. BLACK, ET AL., SUPREME COURT STATE OF NEW YORK COUNTY OF NEW YORK, DATED MARCH 15, 1974, EXHIBIT A TO AFFIDAVIT OF MATHIAS L. SPIEGEL DATED OCTOBER 15, 1976 (pp. A217-A226)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MORRIS SHAPIRO,

Plaintiff,

- against -

E. R. BLACK, G. R. BROWN, HAROLD S. GENEEN, POMEROY DAY, WILLIAM ELFERS, J. V. LESTER, HART PERRY, H. P. SCHOEN, R. E. BENNETT, R. F. ERICKSON, F. J. DUNLEAVY, A. E. FRIEDMAN, R. L. BRITTENHAM, J. A. McCONE, J. PATRICK LANNAN, R. N. LAUGHLIN, R. S. PERKINS, FELIX G. ROHATYN, T. B. WESTFALL, H. V. WILLIAMS, LAZARD FRERES & CO., MEDIOBANCA BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI and INTERNATIONAL TELEPHONE & TELEGRAPH CO.,

Defendants.

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and serve a copy of your answer on plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you be default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial. The basis of venue is the residence of defendant International Telephone & Telegraph Co., which maintains its principal office 320 Park Avenue, New York, N.Y..

DATED: New York, New York
March 15, 1974

Mordecai Rosenfeld
Attorney for Plaintiff
233 Broadway
New York, N.Y. 10007
WO 4 1369

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MORRIS SHAPIRO,

Plaintiff,

- against -

E. R. BLACK, G. R. BROWN, HAROLD S. GENEEN, POMEROY DAY, WILLIAM ELFERS, J. V. LESTER, HART PERRY, H. P. SCHOEN, R. E. BENNETT, R. F. ERICKSON, F. J. DUNLEAVY, A. E. FRIEDMAN, R. L. BRITTENHAM, J. A. McCONE, J. PATRICK LANNAN, R. N. LAUGHLIN, R. S. PERKINS, FELIX G. ROHATYN, T. B. WESTFALL, H. V. WILLIAMS, LAZARD FRERES & CO., MEDIOBANCA BANCA di CREDITO FINANZIARIOSOCIETA PER AZIONI and INTERNATIONAL TELEPHONE & TELEGRAPH CO.,

Defendants.

COMPLAINT

Plaintiff, by his attorney, Mordecai Rosenfeld, alleges the following on information and belief, except paragraph "1", which is stated on knowledge:

1. (a). Plaintiff is, and has been since April, 1952 a holder of the common shares of International Telephone & Telegraph Company (the "Company"); he presently owns four hundred (400) shares.

(b). Plaintiff brings this case derivatively on the Company's behalf.

2. The Company, a Delaware Corporation has its principal offices at 320 Park Avenue, New York, New York.

3. (a). The individual defendants are, and have been at relevant times, the Company's directors.

(b). In addition to being directors, defendant Geneen is, and was at all relevant times, the Company's chairman and chief executive officer; defendant Dunleavey is, and was at all relevant times, the Company's president; and defendants Bennett, Lester and Westfall are, and were at all relevant times executive vice-presidents of the Company.

(c). Defendant Lazard Freres & Co. ("Lazard") is a partnership organized under the laws of the State of New York. Lazard is in the investment banking business; it has at all relevant times acted as the Company's financial adviser. Defendant Rohatyn is and has been at all relevant times a partner of Lazard.

(d). Mediobanca Banca di Credito Finanziario-societa Per Azioni ("Banca"), is a bank which has its principal office in Milan, Italy.

4. By an offer that expired on July 31, 1970, the Company reported that it acquired all of the outstanding shares of Hartford Fire Insurance Company ("Hartford") in

exchange for shares ($2.25 Convertible N Preferred) issued by the Company (the "Exchange"). The prospectus that solicited the Hartford shareholders to exchange their shares stated that the Exchange would be tax - free under the regulations of the Internal Revenue Service. The merger between the Company and Hartford was conditioned on the Exchange being on a tax - free basis under the regulations of the Internal Revenue Service.

5. (a). Prior to the Exchange offer, the Company had bought approximately 1.7 million shares (approximately 8%) of Hartford's stock. In order for the subsequent Exchange to be tax - free, it was necessary for the Company to sell all of its Hartford shares prior to the effective date of the Exchange.

(b). Rather than selling the shares as required by law, the individual defendants, Lazard and Banca entered into a scheme by which the Company only appeared to have sold its Hartford shares.

(c). On the basis of the Company's representations that its Hartford stock had been sold, the I R S granted the Exchange tax - free status.

(d). The representations to the I R S that the Company's Hartford stock had been sold was false, as

the individual defendants, Lazard and Banca knew. In fact, although Banca held formal title to the Hartford shares for a brief period, control was never relinquished by the Company and Lazard.

(e). Nonetheless, in furtherance of their scheme, the Exchange was consummated on the basis of it being tax - free.

(f). Both Lazard and Banca realized sizeable fees and profits for their part in the purported sale of the Company's Hartford shares.

(g). The individual defendants, Lazard and Banca were careful not to reveal to the I R S the true nature of the purported sale by the Company of its Hartford shares.

6. The Internal Revenue Service has now ruled, on the basis of all the facts it has uncovered, that the Exchange should not have been on a tax - free basis, and that, therefore, Hartford shareholders are liable for taxes on any capital gains realized as a result of the Exchange.

7. Hartford shareholders have brought suit against the Company, claiming that the Company is liable to them for any taxes that may be asserted by the Internal

Revenue Service as a result of the Exchange and for other damages suffered by reason of the Exchange.

8. (a). If the Company is held liable for taxes or other damages resulting from the Exchange, it will be because the individual defendants and Lazard violated their fiduciary duties to the Company and acted improperly and illegally in consummating the Exchange.

(b). The individual defendants, Lazard and Banca conspired and schemed to make the Exchange appear tax - free when, as the defendants knew, it was not entitled to be tax - free under the governing regulations of the I R S.

(c). Therefore, all payments incurred by the Company as a result of this liability (including the reimbursement of the taxes, damages, and all expenses incurred in the litigations concerning any liability for and payment of the taxes and other damages) should be borne by the individual defendants, Lazard and Banca, and not by the Company.

9. (a). The Company, except for the illegal acts of the individual defendants, Lazard and Banca would have no liability to pay the taxes or other damages incurred on the Exchange.

(b). Without a legal requirement that the Company pay or reimburse former Hartford shareholders for such taxes or damages, any such payment or reimbursement would be an illegal waste of the Company's assets.

10. No demand has been made on the Company's board of directors to bring this action because such a demand would be futile: Every director is a defendant herein and is liable for the wrongs alleged; any suit brought by the directors would be in hostile hands and could not be prosecuted effectively; any delay in bringing this action would risk defenses based on laches or the statutes of limitations; and every director participated in or acquiesced in the wrongs alleged and is liable to the Company therefore.

Wherefore, plaintiff prays for judgement:

A. Enjoing the Company from making (1) any payment or reimbursement for any taxes imposed upon Hartford's shareholders as a result of the Exchange or (2) any payment for any damages suffered by Hartford's shareholders.

B. Requiring the individual defendants, Lazard and Banca, jointly and severally, to pay over to the Company any expense or cost incurred by the Company in connection with any liability of the Company for the payment or reimbursement of taxes imposed on Hartford's shareholders or damages incurred by Hartford's shareholders as a result of the Exchange.

C. Awarding plaintiff the costs and expenses of this action, including counsel fees.

D. Granting such other and further relief as may be proper.

Mordecai Rosenfeld
Attorney for Plaintiff
233 Broadway
New York, New York 10007
WO 4 1369

VERIFICATION

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

Morris Shapiro, being duly sworn, deposes and says:

I am the plaintiff in the foregoing action. I have read the complaint herein and the same is true as for those matters stated to be upon knowledge. As for the matters stated to be upon information and belief, I believe them to be true.

Morris Shapiro

Sworn to before me this
15th day of March, 1974.

[illegible]

NOTARY PUBLIC
[illegible]

LETTER FROM PAUL J. NEWLON DATED OCTOBER 12, 1976 ENCLOSING AN AMENDED AND SUPPLEMENTAL COMPLAINT AND STIPULATION OF SETTLEMENT IN SHAPIRO, EXHIBIT B TO AFFIDAVIT OF MATHIAS L. SPIEGEL DATED OCTOBER 15, 1976 (pp. A227-A305)

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
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CABLE LONGSIGHT, N.Y.
TELEX 12-7851

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LOUIS S. WEISS (1927-1950)

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October 12, 1976

By Hand

Howard J. Aibel, Esq.
Samuel E. Gates, Esq.
S. Hazard Gillespie, Esq.
John H. Schafer, III, Esq.
Abraham L. Pomerantz, Esq.
Milton S. Gould, Esq.
Bennett Frankel, Esq., P.C.
Lawson F. Bernstein, Esq.
Mathias Lloyd Spiegel, Esq.

Dear Sirs:

Enclosed are drafts of:

1. An amended and supplemental complaint in the Shapiro case which we think picks up all the claims in all the derivative cases.

2. Stipulation of settlement with exhibits (releases, order and notice to shareholders).

The order provides both for the appointment of a referee and for a subsequent hearing on notice to shareholders. Perhaps it should be divided into two orders. The notice of hearing should be revised to mention the referee's report, which it does not yet do.

There will have to be a stipulation or an order on consent permitting intervention and the amendment of the complaint.

In view of the tight time schedule, we have prepared the papers on Vydec for quick revisions. Please telephone your comments to Victoria Traube or me, if she is not available.

Obviously, if we are to be in Special II by Friday, speed is of the essence.

Best regards,

Sincerely yours,

Paul J. Newlon

PJN:ek

Enclosures

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MORRIS SHAPIRO, Plaintiff,	:	
-and-	:	
ELIAS AUERBACH, BENJAMIN BERNSTEIN, LOUIS BLECKER, RUTH BLECKER and ROBERT L. BOEHM,	:	
Plaintiffs-Intervenors,	:	AMENDED AND SUPPLEMENTAL COMPLAINT
-against-	:	
E.R. BLACK, G.R. BROWN, HAROLD S. GENEEN, POMEROY DAY, WILLIAM ELFERS, J.V. LESTER, HART PERRY, H.P. SCHOEN, R.E. BENNETT, R.F. ERICKSON, F.J. DUNLEAVY, A.E. FRIEDMAN, R.L. BRITTENHAM, J.A. McCONE, J. PATRICK LANNAN, R.N. LAUGHLIN, R.S. PERKINS, FELIX G. ROHATYN, T.B. WESTFALL, H.V. WILLIAMS, ARTHUR M. HILL, WARREN LEE PIERSON, ANTHONY J.A. BRYAN, ALVIN E. FRIEDMAN, FREDERIC C. HAMILTON, LYMAN C. HAMILTON, HERBERT C. KNORTZ, LAZARD FRERES & CO., LAZARD FRERES ET CIE, MEDIOBANCA BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., and INTERNATIONAL TELEPHONE & TELEGRAPH CO.	:	
Defendants.	:	

Plaintiff and plantiffs-intervenors, complaining against defendants, allege, on information and belief, except as to paragraphs 1 through 5 which are alleged on knowledge:

Plaintiff and Plaintiffs-Intervenors

1. Plaintiff, Morris Shapiro, is, and has been since April 1952 a holder of common shares of International Telephone &

Telegraph Company (hereinafter "ITT"); he presently owns four hundred (400) shares.

2. Plaintiff-Intervenor Elias Auerbach is a stockholder of ITT and has been such continuously since prior to the commission and occurrerce of the acts complained of herein.

3. Plaintiff-Intervenor Robert L. Boehm is a stockholder of ITT and was such at the time of the transactions comlained of herein.

4. Plaintiff-Intervenor Benjamin Bernstein is the owner of 261 shares of the common stock of ITT and has owned such shares continuously since prior to 1969.

5. Plaintiff-Intervenors Louis Blecker and Ruth Blecker are stockholders of and were stockholders at the times of the violations complained of herein. They presently own 850 shares of the common stock of ITT.

FOR A FIRST CAUSE OF ACTION ASSERTED
BY PLAINTIFF SHAPIRO

6. Plaintiff, Morris Shapiro, brings this action derivatively on behalf of ITT.

7. ITT, a Delaware Corporation, has its principal offices at 320 Park Avenue, New York, New York.

8. (a) Defendants E.R. Black, G.R. Brown, H.S. Geneen, P. Day, W. Elfers, J.V. Lester, H. Perry, H.F. Schoen, R.E. Bennett, R.F. Erickson, F.J. Dunleavy, A.E. Friedman, R.L.

Brittenham, J.A. McCone, J. Patrick Lannan, R.N. Laughlin, R.S. Perkins, F.G. Rohatyn, T.B. Westfall and H.V. Williams are, and have been at relevant times, the Company's directors.

(b) In addition to being directors, defendant Geneen is, and was at all relevant times, ITT's chairman and chief executive officer; defendant Dunleavey is, and was at all relevant times, ITT's president; and defendants Bennett, Lester and Westfall are and were at all relevant times executive vice-presidents of ITT.

(c) Defendant Lazard Freres & Co. ("Lazard") is a partnership organized under the laws of the State of New York. Lazard is in the investment banking business; it has at all relevant times acted as ITT's financial adviser. Defendant Rohatyn is and has been at all relevant times a partner of Lazard.

(d) Mediobanca Banca di Credito Finanziario-societa Per Azioni ("Banca"), is a bank which has its principal office in Milan, Italy.

9. By an offer that expired on July 31, 1970, ITT reported that it acquired all of the outstanding shares of Hartford Fire Insurance Company ("Hartford") in exchange for shares ($2.25 Convertible N Preferred) issued by ITT (the "Exchange"). The properties that solicited the Hartford shareholders to exchange their shares state that the Exchange would

be tax-free under the regulations of the Internal Revenue Service. The merger between ITT and Hartford was conditioned on the Exchange being on a tax-free basis under the regulations of the Internal Revenue Service.

10. (a) Prior to the Exchange offer, ITT had bought approximately 1.7 million shares (approximately 8%) of Hartford's stock. In order for the subsequent Exchange to be tax-free, it was necessary for ITT to sell all of its Hartford shares prior to the effective date of the Exchange.

(b) Rather than selling the shares as required by law, the individual defendants, Lazard and Banca entered into a scheme by which ITT only appeared to have sold its Hartford shares.

(c) On the basis of ITT's representations that its Hartford stock had been sold, the IRS granted the Exchange tax-free status.

(d) The representations to the IRS that ITT's Hartford stock had been sold was false, as the individual defendants, Lazard and Banca knew. In fact, although Banca held formal title to the Hartford shares for a brief period, control was never relinquished by ITT and Lazard.

(e) Nonetheless, in furtherance of their scheme, the Exchange was consummated on the basis of it being tax-free.

(f) Both Lazard and Banca realized sizeable fees

and profits for their part in the purported sale of ITT's Hartford shares.

(g) The individual defendants, Lazard and Banca were careful not to reveal to the IRS the true nature of the purported sale by ITT of its Hartford shares.

11. The Internal Revenue Service has now ruled, on the basis of all the facts it has uncovered, that the Exchange should not have been on a tax-free basis, and that, therefore, Hartford shareholders are liable for taxes on any capital gains realized as a result of the Exchange.

12. Hartford shareholders have brought suit against ITT, claiming that ITT is liable to them for any taxes that may be asserted by the Internal Revenue Service as a result of the Exchange and for other damages suffered by reason of the Exchange.

13. (a) If ITT is held liable for taxes or other damages resulting from the Exchange, it will be because the individual defendants and Lazard violated their fiduciary duties to ITT and acted improperly and illegally in consummating the Exchange.

(b) The individual defendants, Lazard and Banca conspired and schemed to make the Exchange appear tax-free when, as the defendants knew, it was not entitled to be tax-free under the governing regulations of the IRS.

(c) Therefore, all payments incurred by ITT as a result of this liability (including the reimbursement of the

taxes, damages, and all expenses incurred in the litigations concerning any liability for and payment of the taxes and other damages) should be borne by the individual defendants, Lazard and Banca, and not by the Company.

14. (a) ITT, except for the illegal acts of the individual defendants, Lazard and Banca would have no liability to pay the taxes or other damages incurred on the Exchange.

(b) Without a legal requirement that ITT pay or reimburse former Hartford shareholders for such taxes or damages, any such payment or reimbursement would be an illegal waste of ITT's assets.

15. No demand has been made on ITT's board of directors to bring this action because such a demand would be futile: Every director is a defendant herein and is liable for the wrongs alleged; any suit brought by the directors would be in hostile hands and could not be prosecuted effectively; any delay in bringing this action would risk defenses based on laches or the statutes of limitations; and every director participated in or acquiesced in the wrongs alleged and is liable to the Company therefore.

FOR A SECOND CAUSE OF ACTION ASSERTED
BY PLAINTIFF-INTERVENOR AUERBACH

16. Plaintiff-Intervenor Auerbach repeats and realleges each and every allegation contained in paragraphs 2

and 7 of this complaint as if the same were set forth at length herein.

17. Plaintiff-Intervenor Auerbach brings this action derivatively in the right and for the benefit of ITT and on behalf of all its stockholders.

18. Individual defendants P. Day, G. Brown, R.L. Brittenham, E.R. Black, R.E. Bennett, F.J. Dunleavy, W. Elfers, A.E. Friedman, H.S. Geneen, J.P. Lannan, R.N. Laughlin, J.V. Lester, J.A. McCone, R.S. Perkins, H. Perry, F.G. Rohatyn, H.P. Schoen, T.B. Westfall and H.V. Williams constitute the board of directors of ITT.

19. In connection with the 1970 merger of ITT and the Hartford Fire Insurance Company (hereinafter "Hartford") a favorable federal tax ruling was required and obtained by ITT.

20. Thereafter the Internal Revenue Service revoked this favorable tax ruling and asserted claims against the former stockholders of Hartford totalling approximately $50,000,000.

21. ITT has no tax liability in connection with the said merger, and the revocation of the favorable tax ruling by the Internal Revenue Service does not impose any tax liability on ITT.

22. Despite the foregoing, ITT has publicly announced that it intends to reimburse the former stockholders

of Hartford for tax liabilities now imposed on them following the revocation of the favorable Internal Revenue Service ruling on the 1970 merger.

23. Such action by ITT, if persisted in, will result in a loss to ITT of many millions of dollars. Such a loss is wholly unnecessary and would amount to a gift of assets of ITT to former stockholders of Hartford having no claim upon such assets.

24. By reason of the foregoing ITT, without the protection of this Court, will suffer substantial damages if it is not enjoined and prevented from taking action to make good from the assets of ITT federal tax claims against the former stockholders of Hartford.

25. Demand by Plaintiff-Intervenor Auerbach that the board of directors of ITT bring this action was not made and would have been futile because the members of the Board of directors have themselves participated in the wrongs alleged herein or have remained inactive although they had knowledge of the wrongs herein alleged; and they or some of them are themselves liable for the wrongs alleged herein and therefore they would not and could not diligently prosecute this action because if they brought this action they would have to bring it against themselves.

26. Plaintiff-Intervenor Auerbach has no remedy at law.

FOR A THIRD CAUSE OF ACTION ASSERTED
BY PLAINTIFF-INTERVENOR AUERBACH

27. Plaintiff-Intervenor Auerbach repeats and realleges each and every allegation contained in paragraphs 2, 7, and 18 of this complaint as if the same were set forth at length herein.

28. Plaintiff-Intervenor Auerbach brings this action derivatively in the right and for the benefit of ITT.

29. The defendant, Rohatyn, is a member of the executive committee of the board of directors of ITT and a partner in the investment banking firm of Lazard Freres & Co.

30. In connection with the 1970 merger of ITT and the Hartford Fire Insurance Co. (hereinafter "Hartford"), it was necessary that ITT obtain a favorable tax ruling which was possible only if ITT disposed of approximately 1.7 million Hartford shares it had acquired for cash.

31. Accordingly the defendant, Rohatyn, in November, 1969, arranged a transaction with a Milan bank called Mediobanca, by which the said bank ostensibly purchased the said Hartford stock from ITT, but the risk of loss or chance of gain remained with ITT.

32. In arranging the said transaction, the defendant, Rohatyn, acted as a director of ITT and a member of

its executive committee. At all times, he owed to ITT fiduciary duties and responsibilities as a director with an obligation to minimize all expenses of ITT in connection with the said transaction.

33. As arranged by the defendant, Rohatyn, the said transaction required payment of $2,200,000 fee from ITT to Mediobanca, which fee was duly paid, even though Mediobanca took no risk of loss.

34. Of the said sum of $2,200,000 only $1,300,000 was retained by Mediobanca and the balance of $900,000 was paid over by Mediobanca to the defendant, Rohatyn, or his firm, Lazard Freres & Co.

35. As a fiduciary, Rohatyn was not entitled to receive from Mediobanca any portion of the fee arising from a transaction negotiated by him as a representative of ITT.

36. In any event, the said fee of $900,000 was grossly excessive as compensation to the defendant, Rohatyn, for services performed by him and, if viewed as such compensation, constituted a waste of corporate assets.

37. A demand by the plaintiff-intervenor Auerbach to the board of directors of ITT to bring this action would be futile. All of said directors have had knowledge of the participation by the defendant, Rohatyn, in the fee paid by ITT to Mediobanca and have failed to take any action with respect

thereto. Their failure to take any such action constitutes a violation of their fiduciary duties and obligations to ITT. The directors of ITT would not and could not diligently prosecute this action because they would have to bring it against themselves, which would prevent its effective prosecution.

38. Plaintiff-Intervenor Auerbach has no adequate remedy at law.

FOR A FOURTH CAUSE OF ACTION ASSERTED
BY PLAINTIFF-INTERVENOR BERNSTEIN

39. Plaintiff-Intervenor Bernstein repeats and realleges each and every allegation contained in paragraphs 4 and 7 of this complaint as if the same were set forth at length herein.

40. Plaintiff-Intervenor Bernstein brings this action derivatively on behalf of ITT.

41. At all times relevant to this action, the shares of the common and other classes of stock of ITT were traded on the New York Stock Exchange.

42. At all the times relevant to this action, the defendant Mediobanca Banca di Credito Finanziario-Societa Per Azioni ("Mediobanca") was and is a limited company established under the laws of Italy and has its office at 10, via Filodrammatici, Milan, Italy.

43. At all the times relevant to this action, the defendant Lazard Freres & Co. ("Lazard-NY") was and is a part-

nership organized and existing under the laws of the State of New York and has its principal place of business at 44 Wall Street, New York, New York.

44. At all the times relevant to this action, the defendant Les Fils Dreyfus et Cie, S.A. ("Dreyfus") was and is a corporation established under the laws of Switzerland and has its office at 14/16 Aeschenvorstadt, Basel, Switzerland.

45. At all the times relevant to this action, the defendant Lazard Freres et Cie ("Lazard-Paris") has been and is (a) a partnership, established under the laws of France and its local authorities, engaged in investment banking, with offices at 5 Rue Pillet-Will, Paris, France and (b) a partner in Lazard-NY. Two partners in defendant Lazard-Paris, Pierre David-Weill and Andre Mayer, are partners in defendant Lazard-NY.

46. During the period from late 1968 to early 1969, ITT purchased approximately 1.7 million shares of the common stock of The Hartford Fire Insurance Company ("HFI"). (These shares are sometimes referred to as "the HFI securities.")

47. In April, 1969, ITT and HFI agreed upon a plan of merger. One condition of the plan was that upon consummation of the merger neither HFI, ITT nor their shareholders would incur any tax liability as a result thereof. HFI applied for a ruling from the Internal Revenue Service ("IRS") that the merger would result in no gain or loss for Federal Income Tax purposes.

48. IRS issued a ruling in November 1969, that in order for the merger to be a non-taxable event to the merger parties or their shareholders, ITT was required to dispose of the HFI securities prior to the time the merger proposal was acted upon by the HFI shareholders.

49. ITT turned to its investment banker, defendant Lazard-NY, to assist it in the disposition of the HFI securities. Defendant Lazard-NY arranged for defendant Mediobanca to enter into a written contract with ITT to effect such disposition.

50. The contract, dated November 3, 1969, between ITT and defendant Mediobanca ("Contract") provided that the price ITT would receive, at defendant Mediobanca's election, for the HFI securities (or for the equivalent into which they might be transferred thereafter by merger or exchange) would be one of the following three alternative amounts:

(1) $51 per share, or market price on the closing date, if higher -- the closing date was scheduled for and held on November 9, 1969; or

(2) An amount equal to (i) the fair market value of the HFI securities (as determined by defendant Lazard-NY) for the two week period ending May 31, 1971 plus (ii) the amount of dividends paid on such shares from the closing date to June 10, 1971; or

(3) An amount determined by reference to any sales proceeds received by defendant Mediobanca if it should sell through Lazard-NY, in an arms-length transaction, to any other parties any of the HFI securities, which amount would be the sales proceeds increased by the amount of dividends paid or due prior to the sale, and reduced by the amount of an agreed fee more fully described in paragraph 52 below. The terms of the contract further provided that its provisions were applicable to any other securities received in exchange for the HFI securities in any merger or reorganization.

51. On the same day the contract was entered into defendant Mediobanca notified ITT that it had elected the second and third alternatives.

52. Mediobanca represented in the contract that it was acting on behalf of a syndicate (hereinafter "the Syndicate"). It omitted to state that defendants Lazard-NY and Dreyfus were participants in the Syndicate.

53. As part of its arrangement with defendant Mediobanca, and as a condition to defendant Mediobanca's entering into the contract, ITT was required to pay, and did pay, on or about October 30, 1969, to defendant Mediobanca a commitment fee of approximately $1.3 million. In addition, said arrangement provided that, in the event that defendant

Mediobanca were to sell the HFI securities in arms-length transactions subsequent to June 30, 1970, defendant Mediobanca would receive $.255 per share and that the amount of the fee would be increased to $.51 per share if defendant Mediobanca were so to sell the securities subsequent to December, 1970.

54. Defendant Mediobanca and defendant Lazard-NY entered into a separate written agreement on or about November 3, 1969, providing, among other things, that defendant Mediobanca and defendant Lazard-NY would share equally in any profits realized by defendant Mediobanca under its agreement with ITT ("Separate Lazard-NY-Mediobanca Agreement").

55. Under the terms of the Separate Lazard-NY-Mediobanca Agreement, defendant Lazard-NY was "instructed" by defendant Mediobanca to sell the HFI securities in such amounts and at such times as defendant Lazard-NY deemed advisable.

56. The proposed merger was rejected by the Insurance Commissioner of Connecticut. Thereafter, in late December, 1970 ITT proposed an exchange offer pursuant to which it offered to exchange one share of ITT Convertible Series N Preferred Stock for each outstanding share of HFI. The exchange offer was approved by the Insurance Commissioner on May 23, 1970. Thereafter, ITT made such an exchange offer. Through the exchange offer ITT acquired more than 95% of the

outstanding shares of HFI. Pursuant to the exchange offer defendant Mediobanca exchanged the HFI securities for approximately 1.7 million shares of the ITT Convertible Series N Preferred Stock (the "N shares").

57. Beginning in late June of 1970, the N shares were traded on the New York Stock Exchange.

58. In December, 1970, Mediobanca, on behalf of the Syndicate, entered into two agreements to sell the N shares:

(a) An agreement, dated December 15, 1970, with Les Fils Dreyfus & Cie, S.A. ("the Dreyfus Agreement"), under which defendant Dreyfus was granted an option to May 1, 1971, to purchase 100,000 shares of the N shares at a price of $55 per share. Under the Dreyfus Agreement, defendant Dreyfus was in no way obligated to purchase such shares.

(b) An agreement, dated December 15, 1970, with International Investment Associates ("I.I.A.") ("the I.I.A. Agreement"), under which I.I.A. was granted an option to May 1, 1971 to purchase 400,000 shares of the stock at a price of $55 per share. Under the I.I.A. Agreement, I.I.A. was in no way obligated to purchase such shares.

59. Neither I.I.A. nor defendant Dreyfus made any payment to ITT or Mediobanca for the options granted to them.

60. At the time the Dreyfus and I.I.A. Agreements were made ITT had no knowledge that:

(a) The President of I.I.A., one Jean Guyot, was a partner in Lazard-Paris and was or would soon become a member of the board of directors of Mediobanca;

(b) Michel David-Weill, a partner in Lazard-Paris, was a member of the board of directors of I.I.A.;

(c) Defendant Lazard-NY was a participant in the Syndicate; and

(d) Defendant Dreyfus was a participant in the Syndicate.

61. When the I.I.A. and Dreyfus Agreements were entered into, the market price of the ITT Convertible Series N Stock on the New York Stock Exchange ("market price") was approximately $60 to $62 per share.

62. Between March 29, 1971 and March 31, 1971, the sale of 100,000 of the N shares to defendant Dreyfus at $55 per share pursuant to the Dreyfus Agreement was effected.

63. Between March 29, 1971 and March 31, 1971, the market price of the ITT Convertible Series N Stock ranged between $73 and $73.875 per share.

64. In a letter dated April 27, 1971, defendant Mediobanca confirmed to ITT that the former had agreed with I.I.A. to extend from May 1, 1971 to May 25, 1971 the period of time during which I.I.A. would have the right to purchase

the 400 '00 N shares at $55 per share under the I.I.A. Agreement. No compensation was given to ITT for this extension.

65. Between May 26, 1971 and May 28, 1971, the sale of 400,000 of the N shares to I.I.A. at $55 per share pursuant to the I.I.A. Agreement was effected.

66. Between May 26, 1971 and May 28, 1971, the market price of the ITT Convertible Series N Stock ranged beteen $77 and $79.25 per share.

67. It was represented to ITT that the Dreyfus and the I.I.A. Agreements conformed to the provisions of the contract. In fact, however, they did not, as the sales were not negotiated and made at arms-length to unrelated third parties.

68. Defendant Dreyfus, by purchasing 100,000 N Shares while it was a participant in the Syndicate which was obligated under the contract to sell the N Shares only at arms-length, employed a device, scheme or artifice to defraud ITT, and engaged in a transaction, practice or course of conduct which operated as a fraud or deceit upon ITT, to the damage of ITT.

69. By holding defendant Dreyfus out to be independent (and, therefore, not a participant in the Syndicate), and by conspiring with Dreyfus and other persons whose identities are presently unknown to the plaintiff, or by aiding and abetting Dreyfus in its course of conduct described in paragraph 68 hereof, defendants Mediobanca and Lazard-NY employed

a device, scheme or artifice to defraud ITT, and engaged in a transaction, practice or course of conduct which operated as a fraud or deceit upon ITT, to the damage of ITT.

70. Defendant Lazard-NY, by not informing ITT of its participation in the Syndicate, and defendants Mediobanca and Lazard-NY, by selling 400,000 N Shares to I.I.A., a related party, while obligated under the contract to sell the N Shares only at arms-length, and I.I.A., in conspiring with or by aiding and abetting Mediobanca and Lazard-NY (and other persons whose identities are presently unknown to the plaintiff) in the course of conduct described in this paragraph 70 and hereinabove:

(a) employed a device, scheme or artifice to defraud ITT;

(b) obtained moneys rightfully due ITT by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(c) engaged in a transaction, practice or course of conduct which operated as a fraud or deceit upon ITT to the damage of ITT.

71. When the plaintiff ascertains the identities of the other persons presently unknown, referred to in paragraphs

69 and 70 above, the plaintiff may seek the leave of the Court to amend this complaint to add any or all of such persons as defendants herein.

72. On June 18, 1973 Plaintiff-Intervenor Bernstein, by his attorney, sent a letter to ITT demanding that ITT commence an action against the defendants Lazard-NY, Lazard-Paris, Mediobanca, and Dreyfus on the basis, substantially, of the allegations contained in paragraphs 39 through 70 hereinabove. A proposed complaint, substantially similar to paragraphs 39 through 70 hereinabove, was also sent to ITT. Copies of the letter and proposed complaint are attached as Exhibits A-1 and A-2.

73. In a letter dated August 9, 1973, that demand was rejected by ITT.

FOR A FIFTH CAUSE OF ACTION ASSERTED BY PLAINTIFF-INTERVENORS LOUIS BLECKER AND RUTH BLECKER

74. Plaintiffs-Intervenors Louis Blecker and Ruth Blecker repeat and reallege each and every allegation contained in paragraphs 5 and 7 as if the same were set forth at length herein.

75. Plaintiffs-Intervenors Blecker bring this action derivatively on behalf of ITT.

76. Lazard Freres & Co. ("Lazard-NY") is a partnership organized and existing under the laws of the State of New York with principal places of business at 44 Wall Street and One Rockefeller Plaza, New York, New York.

77. Mediobanca Banca de Credito Finanziario-Societa Per Azioni ("Mediobanca") is a limited company established under the laws of Italy with offices at 10 via Filodrammatici, Milan, Italy.

78. Les Fils Dreyfus et Cie, S.A. ("Dreyfus") is a corporation established under the laws of Switzerland, with its principal place of business at 14-16 Aeschenvorstadt, Basel, Switzerland.

79. Lazard Freres et Cie ("Lazard-Paris") is a partnership established under the laws of France, its provinces and prefectures, with its principal place of business at 5 rue Pillet-Will, Paris, France.

80. At the time of the acts complained of, and as of May 26, 1970, Felix G. Rohatyn and Thomas F.X. Mullarkey, were officers and partners of Lazard-NY.

81. At the time of the acts complained of, and as of May 26, 1970, the following were officers and/or directors of ITT:

Name	Office
Howard J. Aibel	Senior Vice President and General Counsel
Richard E. Bennett	Executive Vice President and Director
*Eugene R. Black	Director
Raymond L. Brittenham	Senior Vice President - Law and Counsel and Director
*George R. Brown	Director
Francis J. Dunleavy	Executive Vice President and Director

Name	Office
Russell F. Erickson	Director
*Alvin E. Friedman	Director
*Harold S. Geneen	Chairman and President and Director
Lyman C. Hamilton, Jr.	Vice President and Treasurer
*Arthur M. Hill	Director
**Charles T. Ireland, Jr.	Senior Vice President and Director
*J. Patrick Lannan	Director
R. Newton Laughlin	Director
*John A. McCone	Director
*Richard S. Perkins	Director
Hart Perry	Executive Vice President - Finance and Director
*Warren Lee Pierson	Director
*Felix G. Rohatyn	Director
Ted B. Westfall	Executive Vice President and Director

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* Member of the Executive Committee.
** Not named as a defendant in this cause of action, deceased.

Introduction

82. Commencing in or about October 1969, the defendants, or some of them, other than ITT, entered into a plan, scheme and conspiracy to benefit themselves or some of them at the expense of ITT, such plan having been developed as a result of the knowledge of the defendants that ITT might have to divest itself of its holdings of the common stock ("Shares") of The Hartford Fire Insurance Company ("Hartford").

83. In pursuance of such plan, scheme and conspiracy, the aforementioned defendants, or some of them, participated in

arranging for ITT and Mediobanca to enter into a written contract dated November 3, 1969 to effect the disposition of the Shares.

84. In pursuance of such plan, scheme and conspiracy the defendants or some of them, fraudulently concealed from any public source a separate agreement dated November 3, 1969 between Mediobanca and Lazard-NY for the disposition of the Shares. Plaintiffs-Intervenors Blecker could not have become aware of this agreement until at least some time in May of 1973.

85. In pursuance of such Plan, scheme and conspiracy the defendants, or some of them, caused false information to be submitted to the Internal Revenue Service ("IRS") as to the contract to be entered into between Mediobanca and ITT for the disposition of the Shares.

86. In pursuance of such plan, scheme and conspiracy, the defendants, or some of them, concealed information from tax consel for ITT and Hartford, said tax counsel being unaware until some time after May 26, 1970 of the existence of the separate agreement between Mediobanca and Lazard-NY for the disposition of the Shares.

Internal Revenue Service

87. In 1968 and 1969, ITT purchased approximately 1.7 million shares of the common stock of Hartford. In April

of 1969, ITT and Hartford agreed upon a plan of merger. The merger plan was conditioned upon the parties and their shareholders not incurring any tax liability. Hartford sought a ruling from IRS that the merger would result in no gain or loss for federal income tax purposes.

88. On October 13, 1969, IRS issued a ruling that the merger would be a non-taxable event to the parties and their shareholders if ITT disposed of its holdings of the Shares prior to the approval of the merger proposal by the Hartford shareholders.

89. On October 14, 1969, ITT requested a supplemental ruling from the IRS, that the sale of the Shares pursuant to a proposed contract of sale with Mediobanca would meet the conditions imposed in the IRS ruling of October 13, 1969.

90. On October 21, 1969, the IRS issued a ruling that the proposed sale by ITT of the Shares to Mediobanca would constitute an unconditional disposal of the Shares for the purpose of its ruling of October 13, 1969.

91. On or about March 6, 1974, the IRS revoked its ruling of October 21, 1969.

Mediobanca-Lazard-NY

92. On November 3, 1969, Mediobanca, acting on behalf of a syndicate, entered into a contract with ITT

("Contract") which provided, at Mediobanca's option, alternative ways for determining the price ITT would receive for the Shares or their equivalents:

(i) Market price on date of closing or $51 per share, whichever was higher;

(ii) An amount equal to (a) the fair market value of the Shares determined by Lazard-NY for the two week period ending May 31, 1971 plus (b) the amount of dividends paid on such shares from the closing date to June 10, 1971; or

(iii) An amount equal to (a) the proceeds received by Mediobanca from the sale of the Shares or their equivalents to third parties in an arms-length transaction plus (b) the amount of any dividends declared prior to the date of sale less (c) the amount of any agreed upon fees.

The terms of the contract further provided that its provisions were applicable to any other securities received in exchange for the Shares in any merger or reorganization. The terms of the contract also recited that Mediobanca was acting on behalf of a syndicate ("Syndicate").

93. On the same day the contract was entered into, Mediobanca notified ITT that it had elected the second and third alternatives.

94. As a condition to the contract, ITT was required to pay, and did pay to Mediobanca, a commitment fee of approximately $1.3 million. In addition, in the event that Mediobanca sold the Shares to third parties in arms-length transactions subsequent to June 30, 1970, Mediobanca was to receive $.255 per share as a fee, which fee would be increased to $.51 per share if Mediobanca sold the Shares subsequent to December, 1970.

95. On or about November 3, 1969, Mediobanca and Lazard-NY entered into a separate written agreement providing, among other things that:

(a) Mediobanca and Lazard-NY would share equally in any profits realized by Mediobanca under its agreement with ITT;

(b) Lazard-NY was to sell the Shares in such amounts and at such times as it deemed advisable.

96. On November 6, 1969, ITT delivered to Lazard-NY, its irrevocable proxy in favor of Lazard-NY to vote the Shares at a Special Meeting of Stockholders of Hartford to be held on November 10, 1969, subject to the closing of the Contract.

97. In a letter dated November 6, 1969, ITT indemnified and held Lazard-NY and any of its partners harmless against any liability which might arise under the Contract.

98. On November 9, 1969, the closing under the Contract was held at Dreyfus' offices in Basel. At the closing

ITT delivered the Shares to Lazard-NY, who, by Thomas F.X. Mullarkey acknowledged receipt thereof.

99. The proposed merger was rejected by the Insurance Commissioner of Connecticut. Thereafter, in December of 1970 ITT proposed an exchange offer pursuant to which it offered to exchange one share of ITT Convertible Series N Preferred Stock ("N") for each outstanding share of Hartford, which offer was approved by the Insurance Commissioner of the State of Connecticut.

100. Thereafter, on May 26, 1970, ITT made such an exchange offer ("Offer") and acquired more than 95% of the outstanding stock of Hartford, including the Shares. The Offer was false and misleading.

Officers and Directors of ITT

101. The officers and directors of ITT knew or should have know that the description of the Mediobanca transaction on pages 15 and 16 of the Offer was materially false and misleading in that no sale of the shares pursuant to the Contract has been effected.

102. The officers and directors fo ITT knew or should have know that the description of the Mediobanca transaction on pages 15 and 16 of the Offer was materially false and misleading in that it failed to spell out the roles of Lazard-NY and Dreyfus.

103. The officers and directors of ITT knew or should have known that the description of the Federal Tax Consequences on page 6 of the Offer was materially false and misleading in that no sale of the shares pursuant to the Contract had been effected.

104. The officers and directors of ITT knew or should have known that the description of the compensation of Lazard-NY for services on page 23 of the Offer was materially false and misleading in that Lazard-NY was not an independent banker, but a partner with Mediobanca pursuant to the agreement referred to in paragraph 96 herein.

Mediobanca-Dreyfus & I.I.A.

105. In June of 1970, the N shares began to trade on the New York Stock Exchange.

106. In December 1970, Mediobanca, on behalf of the Syndicate, entered into two agreements to sell the N shares;

(a) An agreement, dated December 15, 1970, with Dreyfus, granting it an option to May 1, 1971 to purchase 100,000 shares of N at a price of $55 per share. The agreement did not obligate Dreyfus to purchase such shares.

(b) An agreement, dated December 15, 1970, with International Investment Associates ("I.I.A.") under

which I.I.A. was granted an option to May 1, 1971 to purchase 400,000 shares of N at a price of $55 per share. The agreement did not obligate I.I.A. to purchase such shares.

107. Neither I.I.A. nor Dreyfus made any payment to ITT or Mediobanca for the options granted to them.

108. At the time Mediobanca, on behalf of the Syndicate, entered into the agreements with Dreyfus and I.I.A. referred to in ¶ 106 herein:

(a) The President of I.I.A., Jean Guyot, was a partner in Lazard-Paris and a member of the Board of Directors of Mediobanca;

(b) Michel David-Weill, a partner in Lazard-Paris, was a member of the Board of Directors of I.I.A.;

(c) Pierre David-Weill, a partner in Lazard-Paris, was also a partner in Lazard-NY;

(d) Andre Mayer, a partner in Lazard-Paris, was also a partner in Lazard-NY;

(e) Lazard-NY was a participant in the Syndicate;

(f) Dreyfus was a participant in the Syndicate; and

(g) Dreyfus was controlled by Lazard-NY.

109. When the I.I.A. and Dreyfus agreements were entered into, the market price of N on the New York Stock Exchange was approximately $60 per share,

110. Between March 29, 1971 and March 31, 1971, the sale of 100,000 of the N shares to Dreyfus at $55 per share pursuant to the Dreyfus agreement was effected.

111. Between March 29, 1971 and March 31, 1971, the market price of N was approximately $73 per share.

112. In a letter dated April 27, 1971, Mediobanca confirmed to ITT that it had agreed with I.I.A. to extend from May 1, 1971 to May 25, 1971 the period of time during which I.I.A. would have the right to purchase 400,000 N shares at $55 per share under the I.I.A. agreement. No compensation was given to ITT for this extension.

113. Between May 26, 1971 and May 28, 1971, the sale of 400,000 N shares to I.I.A. at $55 per share pursuant to the I.I.A. agreement was effected.

114. Between May 26, 1971 and May 28, 1971, the market price of N ranged between $77 and $80 per share.

115. The Syndicate led ITT to believe that the Dreyfus and I.I.A. agreements conformed to the provisions of its agreement with Mediobanca.

116. The Snydicate knew, or should have known, that the purchase by Dreyfus of 100,000 N shares pursuant to the agreement referred to in paragraph 106(a) herein could only cause a diminution in the amounts received by ITT under its agreement with Mediobanca.

117. The Snydicate knew or should have known, that the sale of 400,000 N shares to I.I.A. pursuant to the agreement

referred to in paragraph 106(b) herein could only cause a diminution in the amounts received by ITT under its contract with Mediobanca.

118. As a result of the acts and violations by the Syndicate with respect to the sale of the N shares ITT and its shareholders have sustained damage in an amount presently unascertainable but at least in excess of $10,000,000.

ITT-Herbst

119. In 1972 a Class action was commenced against ITT and Lazard-NY, and others, by a former Hartford shareholder (Hilda Herbst v. ITT et al, Civ. 15,555 United States District Court, District of Connecticut) asking as a part of the relief sought that ITT bear the total tax liability that might be imposed upon former Hartford shareholders as a result of their acceptance of the Offer.

120. Upon being notified that IRS had revoked its ruling of October 21, 1969, on or about March 7, 1974, ITT issued a statement which said in part that "...we will reimburse Hartford shareholders for any net tax they may incur as a result of the IRS action. This reimbursement program, based on a preliminary analysis, might amount to $35 million..."

121. Defendants knew or should have known that the submission of false or misleading information to the IRS could lead to the revocation of the IRS ruling of October 21, 1969, to the detriment of ITT and its shareholders.

122. Defendants knew or should have known that the revocation of the IRS ruling of October 21, 1969 would lead to claims against ITT by former Hartford shareholders, to the detriment of ITT and its shareholders.

123. As a result of the acts and violations by the defendants which resulted in the revocation of the IRS ruling of October 21, 1969, ITT and its shareholders have sustained damage in an amount presently unascertainable but at least in excess of $35,000,000.

Conclusion

124. In the course of the plan, scheme and conspiracy set forth in the preceeding paragraphs the defendants other than ITT, and others presently unknown, individually, jointly and in concert, directly and indirectly, made untrue statements of material fact and omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and engaged in acts, practices and a course of business which operated as a fraud and deceit on ITT and its public stockholders, as a seller of securities or in connection with the purchase and sale of securities.

125. Plaintiffs-Intervenors Blecker have made no demand upon ITT or its Board of Directors to bring this action. Such demand would be futile and unavailing in that the Board of Directors has refused to take action therein despite the fact that they

have known about the acts complained of herein. The Board of Directors are named as defendants in this action.

126. Demand on the stockholders of ITT to bring this action was not made and would have been futile and unnecessary because:

(a) The wrongs complained of herein are incapable of stockholder ratification.

(b) Under the law, the management of ITT affairs is entrusted to its directors not its stockholders.

(c) To secure action from the stockholders of ITT would require a proxy contest. The directors of ITT control its proxy machinery and the use of its money to prepare and mail proxy material and solicit stockholders' votes. They would oppose plaintiffs-intervenors Blecker in such a proxy contest. A proxy contest financed by plaintiffs-intervenors Blecker would entail prohibitive expenses to plaintiffs-intervenors Blecker as well as taking so much time as to be an unreasonable burden to plaintiffs-intervenors Blecker.

FOR A SIXTH CAUSE OF ACTION ASSERTED
BY PLAINTIFF-INTERVENOR BOEHM

127. Plaintiff-Intervenor Boehm repeats and realleges each and every allegation contained in paragraph 3 of the complaint as if the same were set forth at length herein.

128. International Telephone & Telegraph Corporation ("ITT") is a Delaware corporation whose shares are publicly held, traded and listed on the New York Stock Exchange.

129. Plaintiff brings this action derivatively in the right of and for the benefit of ITT.

130. The transactions hereinafter described were conducted by means or instrumentalities of interstate commerce and by use of the mails.

131. (a) defendants Bennett, Black, Brittenham, Brown, Dunleavy, Erickson, Geneen, Hill, Lannan, Laughlin, Westfall, Perkins, Pierson, Rohatyn, H. Perry, and McCone and each of them were directors of defendant ITT during the period between April 1969 and December 31, 1970.

(b) the defendants named in paragraph 131(a) and (d) and defendants Day, Elfers, Lester, Schoen and Williams were directors of defendant ITT in March 1974.

(c) defendant Geneen was at all times hereinafter mentioned, and is at the present time chief executive officer of ITT.

132. Heretofore and between June 1, 1970 and December 30, 1970, ITT made an offer to the holders of the common stock of Hartford Fire Insurance Company ("Hartford") to exchange one share of ITT cumulative preferred stock, $2.25, Convertible Series N (hereinafter "ITT Preferred Series N Stock") for each outstanding share of Hartford common stock (the "Exchange Offer").

Pursuant to said Exchange Offer and during the period aforesaid, ITT issued to stockholders of Hartford 21,735,702 shares of ITT Preferred Series N in exchange for approximately 99% of the outstanding shares of Hartford on a share for share basis.

133. The said transaction was entered into by ITT and the Hartford stockholders upon a representation by ITT (set forth in the Exchange Offer) that opinions of counsel had been received to the effect that the aforesaid exchange transaction had the following tax favorable consequences to Hartford shareholders:

> "(i) the exchange by Hartford shareholders of their shares of Hartford Common Stock for shares of ITT Series N Stock will not result in the recognition of any gain or loss to Hartford shareholders making the exchange; (ii) no gain or loss will be recognized by ITT or Hartford by reason of the exchange; (iii) the basis for the shares of ITT Series N Stock received by the Hartford shareholders will be the same as the basis of the shares of Hartford Common Stock surrendered in exchange therefor; (iv) the holding period of the ITT Series N Stock received by a Hartford shareholder will include the holding period of the Hartford Common Stock surrendered in exchange therefor, provided that the Hartford Common Stock is a capital asset in the hands of the shareholder on the date of the exchange; and (v) the ITT Series N Stock to be received in exchange for the Hartford Common Stock will not constitute 'Section 306 stock' within the meaning of the Internal Revenue Code of 1954, as amended."

It was further represented in said Exchange Offer that favorable tax rulings had been received from the Internal Revenue Service with respect to certain key elements of the basis for favorable tax treatment.

134. The foregoing representations were made by ITT at the instance of its then management consisting of the defendant directors hereinabove named in paragraph 131(a).

135. Based on the foregoing representations hereinabove set forth in paragraph 133, the stockholders of ITT and the stockholders of Hartford believed that the favorable tax consequences hereinabove set forth in paragraph 133 applied to the transaction and that rulings from the United States Internal Revenue Service confirming said tax consequence had been secured and the exchange was made on that basis.

136. Upon information and belief, two or more of the defendants hereinabove named in paragraph 131(a) (to wit, at least defendants Geneen and Rohatyn) had knowledge of material facts adversely affecting the representations set forth in paragraphs 133 and 134 herein. The said material facts related in part to whether ITT's acquisition of Hartford shares was "a non-cash transaction" within the meaning of the Internal Revenue Code and whether certain other shares of Hartford which had been previously acquired by ITT for cash had been in fact divested and placed beyond the control of ITT. The said defendants also had knowledge of facts and circumstances concerning the methods and circumstances by which the Internal Revenue Service rulings had been acquired which would have cast significant doubt upon the effectiveness of said rulings. None of the facts and matters known by the said defendants were disclosed in the Exchange Offe.

or otherwise made public. Those defendants, if any, named in paragraph 131(a) who did not have knowledge of said facts ought in the reasonable exercise of prudence and diligence to have learned such facts.

137. (a) on or about March 6, 1974 United States Internal Revenue Service announced that it had recalled the tax rulings hereinabove referred to in paragraph 133 upon the ground inter alia that material facts had been misrepresented to, or withheld from it, and that it was taking the position that the exchange transaction did not qualify for the favorable tax treatment referred to in paragraph 133 of this complaint.

(b) by reason of the foregoing circumstances ITT has been exposed to claims, litigation and threats of litigation by former shareholders of Hartford seeking rescission of the exchange or indemnification from tax liability in connection therewith. ITT has already incurred substantial fees and expenses in dealing with said claims.

138. If ITT has any liability in respect of the claims, litigation or threats of litigation by former Hartford stockholders as aforesaid, it arises from the acts of the individual defendant directors named in paragraph 131(a) in misrepresenting or failing to disclose material facts in the Exchange Offer as hereinabove referred to in paragraph 136 all in violation of Section 10b of the Securities Exchange Act of 1934 and Rule 10b-5 of the Rules of the Securities and Exchange Commis-

Rule 10b-5 of the Rules of the Securities and Exchange Commission promulgated thereunder and in breach of their common law fiduciary duty as directors of ITT.

139. The said individual defendants named in paragraph 131(a) hereof should be required to indemnify ITT from all liability loss, damage, cost or expenses including attorneys fees arising from their misconduct, breach of fiduciary duty or negligence as aforesaid.

140. No demand has been made upon the directors of ITT to institute this action since such demand would be futile inasmuch as the action seeks relief against said directors and alleges that said directors are not able to independently conduct the affairs of the corporation in respect of disputes and litigation concerning the Exchange Offer. An appeal to or demand upon the shareholders has not been made by plaintiff-intervenor Boehm because of their large number and differing classes and interests in the subject matter of this litigation.

FOR A SEVENTH CAUSE OF ACTION BY
PLAINTIFF-INTERVENOR BOEHM

141. Plaintiff-Intervenor Boehm repeats and realleges each and every allegation hereinabove contained in paragraphs 3 and 127 through 138 as if the same were set forth at length herein.

142. (a) on or about March 8, 1974 the management of ITT consisting of the directors hereinabove referred to in paragraph 131(b) issued a statement to the public announcing

that ITT would reimburse and make whole former Hartford shareholders for any tax liability incurred by them as a result of a determination by the Internal Revenue Service that the exchange transaction was not entitled to the favorable tax treatment set forth in paragraph 133 hereof. Said announcement further stated that the cost to ITT of said reimbursement would be approximately $35,000,000.

(b) the decision by ITT's present management to so indemnify former Hartford shareholders is not based on legal considerations relating to ITT's possible legal exposure to said former Hartford shareholders but upon considerations as to which one or more of said defendants acted and continue to act of a conflict of interest.

143. Indemnification of former Hartford shareholders may not be legally required or even warranted either in whole or in part. Among the persons formerly owning or controlling large blocks of the Hartford stock are persons who had knowledge of the material facts hereinabove set forth in paragraph 136. By reason of such knowledge said persons (and the blocks of stocks owned or represented by them) would not be legally entitled to indemnification or reimbursement from ITT. The shares of stock of Hartford falling within this latter category of undeceived persons may amount to many millions of dollars which ITT should not be required to pay even if reimbursement to former Hartford shareholders were otherwise warranted.

144. Upon information and belief the defendants hereinabove named in paragraph 131(b) have determined to cause ITT to commit itself to make reimbursement to all Hartford shareholders irrespective of the circumstances set forth in paragraph 141 for reasons not relating to the interests of ITT but for other reasons including:

(i) several persons representing former Hartford interests are presently on the Board of Directors of ITT, and

(ii) the present Board of ITT seeks to avoid any judicial inquiry into the matters hereinabove set forth in paragraph 141 at the present time.

145. By reason of their conflict of interest and possible exposure to personal liability in respect of the Hartford exchange transaction as hereinabove alleged, the present management of ITT is not in a position to exercise independent business judgment in determinations concerning the disposition of claims against ITT arising from the aforesaid transaction. At the present time ITT lacks independent management capable of defending or disposing of such claims.

146. (a) Since the date of consummation of the exchange the securities of ITT have been traded in the open market and have been purchased and sold based upon published financial information which made no mention of a possible contingent lia-

bility for $35,000,000 to former Hartford shareholders. Admission by management of a liability in said amount at the present time could cause additional claims against ITT under Section 10b of the Securities Exchange Act by purchasers of ITT shares since the date of the exchange.

(b) ITT is therefore in a situation where various classes or groups of stockholders can and will be asserting conflicting claims as to its assets all arising from acts constituting violations of Section 10b of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

(c) In the interests of ITT and ITT's stockholders this Court should intervene for the purpose of requiring that all litigation and claims against ITT in respect of the Hartford exchange transaction be litigated, settled or disposed of under the aegis of the Court and its officers to the extent that this Court may properly exercise jurisdiction over such litigation and claims; with ITT and its various classes or categories of shareholders receiving such independent representation as will insure an honest and arms length disposition of the conflicting claims and disputes including claims against former and present management for indemnification.

147. Plaintiff has no adequate remedy at law.

FOR AN EIGHTH CAUSE OF ACTION BY
PLAINTIFF-INTERVENOR BOEHM

148. Plaintiff-Intervenor Boehm repeats and realleges each and every allegation contained in paragraphs 3 and 127 through 138 of this complaint as if the same were set forth at length herein.

149. Defendant Lazard Freres & Co., a partnership acted as advisers and financial counselors to ITT in arranging the Hartford exchange offer and did so in a fiduciary capacity to ITT. Lazard Freres & Co. received very substantial compensation from ITT for their services.

150. Defendants Lazard Freres knew of the matters herinabove set forth in paragraph 136 and knew that the said matters were not disclosed to the shareholders of Hartford or of ITT but nevertheless acted in concert with one or more of the individual defendants hereinabove named in paragraph 131(a) in promoting and effectuating the exchange transaction.

151. By reason of the foregoing, Lazard Freres should be required to indemnify ITT for all liability, damage, cost and expenses arising from the exchange transaction and should refund to ITT all fees received by Lazard Freres & Co. in connection with said transaction.

WHEREFORE, each plaintiff and plaintiff-intervenor prays for judgment as follows:

1. On the first cause of action

A. Enjoining ITT from making (1) any payment or reimbursement for any taxes imposed upon Hartford's shareholders as a result of the Exchange or (2) any payment for any damages suffered by Hartford's shareholders;

B. Requiring the individual defendants, Lazard and Banca, jointly and severally, to pay over to ITT any expense or cost incurred by ITT in connection with any liability of ITT for the payment or reimbursement of taxes imposed on Hartford's shareholders or damages incurred by Hartford's shareholders as a result of the Exchange; and

C. Awarding plaintiff, Morris Shapiro, the costs and expenses of this action, including counsel fees.

2. On the second cause of action:

A. Enjoining ITT from making any voluntary payments whatever with respect to any tax obligations of the former stockholders of Hartford for which ITT is not fully legally responsible.

B. Requiring the individual defendants to account to ITT for any losses sustained by the corporation as a result of the acts and transactions set forth herein, including interest thereon; and

C. Awarding to plaintiff-intervenor Auerbach the costs and expenses of this action including reasonable counsel and accountant's fees.

3. On the third cause of action:

A. Requiring the individual defendants jointly and severally to account to ITT for all losses and damages sustained by ITT as a result of the acts and transactions complained of herein and, upon such accounting, requiring that they pay over to ITT the amount of such losses and damages; and

B. Granting to plaintiff-intervenor Auerbach the costs and disbursements of this action including reasonable attorney's fees and accountants' fees.

4. On the fourth cause of action:

A. Requiring that defendants account to ITT for any and all damages resulting to ITT from the acts herein complained of, and for any and all profits, gains, and benefits accruing to the defendants by virtue of said acts; and

B. An award to plaintiff-intervenor Bernstein of costs, including attorneys and accountants fees;

5. On the fifth cause of action:

A. Requiring Dreyfus to account to ITT for all illegal and improper profits realized by it;

B. Requiring Lazard-NY to account to ITT for all illegal and improper profits realized by it;

C. Requiring Lazard-Paris to account to ITT for all illegal and improper profits realized by it;

D. Requiring defendant Mediobanca to account to ITT for all illegal and improper profits realized by it;

E. Requiring all defendants other than ITT to account to ITT for all losses sustained by ITT as a result of the improper and illegal transactions alleged herein;

F. For punitive damages against all defendants other than ITT and its officers and directors in their capacity as such, in the sum of $5,000,000; and

G. Awarding plaintiffs-intervenors Blecker the costs and disbursements of this action, including reasonable counsel and accountant's fees.

6. On the sixth, seventh and eighth causes of action:

A. Directing that the defendants indemnify ITT from all liability, damage cost and expense incurred by ITT arising from the wrongful acts set forth in the complaint.

B. Directing that the Court grant such interim or final equitable relief as insures that ITT and its various classes of shareholders be adequately protected in the litigation, settlement, administration or other disposition of the various claims by and against ITT and its various classes of shareholders arising from the wrongful acts set forth in the complaint, including but not limited to, the appointment of Referees, Special Masters, Special Counsel, Receivers, Trustees, Monitors or other Court Officers as are necessary to implement the foregoing and the issuance of such restraints, orders or directions to ITT and any other parties as are necessary to implement the foregoing.

C. An allowance to the plaintiff-intervenor Boehm counsel of reasonable fees and expenses in connection with this proceeding.

7. On each and every cause of action for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MORRIS SHAPIRO,

Plaintiff,

-and-

ELIAS AUERBACH, BENJAMIN BERNSTEIN, LOUIS BLECKER, RUTH BLECKER and ROBERT L. BOEHM,

Plaintiffs-Intervenors,

-against-

E.R. BLACK, G.R. BROWN, HAROLD S. GENEEN, POMEROY DAY, WILLIAM ELFERS, J.V. LESTER, HART PERRY, H.P. SCHOEN, R.E. BENNETT, R.F. ERICKSON, F.J. DUNLEAVY, A.E. FRIEDMAN, R.L. BRITTENHAM, J.A. McCONE, J. PATRICK LANNAN, R.N. LAUGHLIN, R.S. PERKINS, FELIX G. ROHATYN, T.B. WESTFALL, H.V. WILLIAMS, ARTHUR M. HILL, WARREN LEE PIERSON, ANTHONY J.A. BRYAN, ALVIN E. FRIEDMAN, FREDERIC C. HAMILTON, LYMAN C. HAMILTON, HERBERT C. KNORTZ, LAZARD FRERES & CO., LAZARD FRERES ET CIE, MEDIOBANCA BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., and INTERNATIONAL TELEPHONE & TELEGRAPH CO.,

Defendants.

STIPULATION OF SETTLEMENT

WHEREAS, the above-captioned action was commenced in this Court by plaintiff, Morris Shapiro, as a derivative action on behalf of defendant International Telephone & Telegraph Corporation ("ITT"); and

WHEREAS, plaintiff-intervenor Elias Auerbach is the plaintiff in two other actions, Auerbach v. Brown et al. (the

"Auerbach-N.Y. action"), pending in the Supreme Court of the State of New York for the County of Westchester and Auerbach v. Day, et al. (the "Auerbach-Del. action"), pending in the Court of Chancery of the State of Delaware for the County of New Castle; and

WHEREAS, plaintiffs-intervenors Benjamin Bernstein, Louis Blecker, Ruth Blecker and Robert L. Boehm are the plaintiffs in three other actions, Bernstein v. Mediobanca, et al. (the "Bernstein action") pending in the United States District Court for the Southern District of New York, Blecker, et al. v. Lazard Freres & Co., et al. (the "Blecker action") pending in the United States District Court for the Southern District of New York and Boehm v. Bennett, et al. (the "Boehm action") commenced in the United States District Court for the Southern District of New York; and now pending in the United States District Court for the District of Connecticut; and

WHEREAS, this action and the Auerbach-N.Y., Auerbach-Del., Bernstein, Blecker and Boehm actions were all brought derivatively by shareholders of ITT on behalf of ITT, and are hereafter collectively referred to as the "Derivative Actions"; and

WHEREAS, by order dated October, 1976, plaintiffs-intervenors were permitted to intervene in this action, and leave was granted to plaintiff and plaintiffs-intervenors to serve an amended complaint adding new claims and adding additional parties defendant; and

WHEREAS, an amended complaint has been served which contains substantially all allegations made or proposed to be made in any of the Derivative Actions, and all parties named or proposed to be named in any of the Derivative Actions; and

WHEREAS, all of the Derivative Actions arise out of or relate to the sale of 1,741,348 shares of stock of Hartford Fire Insurance Company ("Hartford") by ITT to defendant Mediobanca S.p.A. ("Mediobanca"); and

WHEREAS, there is pending in the United States District Court for the District of Connecticut an action against ITT and others entitled Herbst, et al. v. International Telephone & Telegraph Corporation, et al. (the "Herbst action"), which arises out of the same transaction as the Derivative Actions; and

WHEREAS, the Herbst action is a class action and a settlement has been proposed in the Herbst action providing for certain benefits to shareholders who exchanged Hartford common stock for ITT series N preferred stock pursuant to an exchange offer mailed on or about May 26, 1970; and

WHEREAS, Mediobanca exchanged 1,741,348 shares of Hartford common stock pursuant to the aforesaid exchange offer, and is therefore within the definition of persons entitled to benefit from the proposed settlement of the Herbst action; and

WHEREAS, extensive discovery into the facts to which the Derivative Actions and the Herbst actions relate has been obtained by plaintiffs in the Herbst action, and the fruits of that discovery have been made available to plaintiffs in the Derivative Actions, and discovery proceedings have also been had in several of the Derivative Actions; and

WHEREAS, defendants have denied and continue to deny the material allegations of the complaints in the Derivative Actions, and the defendants other than ITT deny that they are in any way liable to ITT; and

WHEREAS, defendants have agreed to the terms and provisions of this Stipulation of Settlement solely in order to avoid further expense and burden and without admitting any of the allegations made against them or any wrongdoing whatsoever; and

WHEREAS, it is the intention of the parties by this Stipulation of Settlement to settle finally and completely all of the claims made or which might have been made in the amended complaint in this action, in exchange for consideration to ITT as specified below, and to provide for the delivery of releases by ITT to defendants other than ITT and to all present directors of ITT with respect to all claims of any nature or description in connection with or arising out of the matters, transactions and occurrences recited, described, or referred to in the pleadings and proceedings in this action or in any of the Derivative Actions;

NOW, THEREFORE, it is stipulated and agreed that this action shall be settled, compromised and dismissed with prejudice upon approval of this Court, pursuant to Business Corporation Law § 626(d), after notice to ITT's shareholders and an opportunity for them to be heard, on the following terms and conditions:

1. In full and final settlement, satisfaction and discharge of any and all claims asserted or which might have been asserted against any defendant in the amended complaint in this action, in full and final settlement, satisfaction and discharge of all claims of any nature or description which ITT has or might have against any of the defendants herein in connection with or arising out of the matters, transactions and occurrences recited, described, or referred to in the pleadings and proceedings in this action, the following consideration will be furnished to ITT by or on behalf of the defendants other than ITT: (a) there will be paid to ITT, not later than fifteen days after the Effective Date (as defined below) of this Stipulation of Settlement, the sum of $1,000,000, to be contributed by or on behalf of the defendants other than ITT in such proportions as they shall agree among themselves; and (b) Mediobanca will not file any claim in connection with the proposed settlement of the Herbst action. The defendants other than ITT have been advised that they have meritorious defenses to the above-captioned actions and to the Derivative Actions and would be successful in defending them. The consideration

for this settlement is being furnished by or on behalf of these defendants solely to avoid the further expense and inconvenience of this litigation.

The "Effective Date" of this Stipulation of Settlement shall be the later of (i) thirty-one days after the entry of an order and judgment in accordance with Paragraph 4 hereof, without an appeal having been taken therefrom (or if the date for taking an appeal shall be extended, the date of expiration of the extension without an appeal having been taken); or (ii) if an appeal or appeals be taken from such order and judgment, the date upon which such appeal(s) is (are) finally determined by the highest court to which such appeal(s) can or may be prosecuted in such a manner as to permit consummation of the settlement in accordance with all of the terms and provisions hereof.

2. ITT will, not later than fifteen days after the Effective Date of this Stipulation of Settlement, execute and deliver to all of the above-named defendants and to all present directors of ITT releases substantially in the form of Exhibit A hereto.

3. As soon as practicable after the date upon which this Stipulation of Settlement has been signed on behalf of all parties hereto, this Stipulation of Settlement shall be submitted by any of those parties to the Court for judicial approval in accordance with the provisions of Section 626(d) of the Business Corporation Law, and this Stipulation of Settlement shall consti-

tute an application that the Court enter an order substantially in the form of Exhibit B hereto and direct that notice substantially in the form annexed as Exhibit C hereto be given by ITT at its expense to all of its present shareholders.

4. If this Stipulation of Settlement is approved by the Court, there shall promptly be submitted to the Court by any of the undersigned parties an order and judgment approving this Stipulation of Settlement and adjudging all of its terms to be fair, reasonable and adequate, directing the consummation of its terms and provisions, dismissing the amended complaint on the merits and with prejudice to ITT and all of its shareholders, and discharging the defendants, and each of them, and all of their present and former directors, officers, employees, affiliates, subsidiaries, partners, agents and attorneys, from all claims, demands and causes of action which ITT has or may have, or which have been or might have been asserted on its behalf against the defendants other than ITT, or any of them, in connection with or arising out of any of the matters, transactions or occurrences alleged or which might have been alleged in the pleadings and proceedings in this action and permanently barring and enjoining plaintiff and plaintiffs-intervenors and any shareholder of ITT from the institution or prosecution of any other action against the defendants, or any of them, or any of their present or former directors, officers, employees, partners, agents or attorneys.

5. The attorneys for plaintiff and plaintiffs-intervenors will, at the time directed by the Court, make application to the Court for allowances for their fees for services rendered to ITT in connection with this and the Derivative Actions and for reimbursement of expenses incurred in connection therewith. ITT will pay such allowances as are awarded by the Court.

6. If the Court does not approve this Stipulation of Settlement, or does not enter an order and judgment and an order in accordance with Paragraph 4 hereof, or if upon appeal from such order and judgment it is vacated or modified so as not to permit the consummation of the settlement in accordance with all of the terms and provisions hereof, then this Stipulation of Settlement and all orders entered and proceedings had in connection therewith shall thereupon become null and void without further action by any party hereto and the parties, and each of them, shall be restored to their status quo ante rights.

7. This Stipulation of Settlement is not and shall not be construed as an admission by any of the defendants of any liability or wrongdoing whatsoever in connection with or arising out of any claims which have been asserted or might have been asserted in the pleadings and proceedings in this action or any of the Derivative Actions, or as an admission by plaintiffs or plaintiffs-intervenors that their allegations are in any way without merit. Neither the terms and provisions of this Stipulation of Settlement nor any negotiations or proceedings concerning it shall be offered or received in evidence for any purpose

whatsoever other than for purposes of these settlement and dismissal proceedings; provided, however, that nothing herein contained shall prevent this Stipulation of Settlement and the terms hereof from being used, offered and received in evidence in any proceeding to enforce any or all of the terms hereof.

Dated: October , 1976

MORDECAI ROSENFELD and POMERANTZ
LEVY HAUDEK & BLOCK
Attorneys for Plaintiff

BENNETT FRANKEL
Attorney for Plaintiff-Intervenor
Elias Auerbach

LAWSON F. BERNSTEIN
Attorney for Plaintiff-Intervenor
Benjamin Bernstein

NETTER & SPIEGEL
Attorneys for Plaintiffs-Intervenor
Louis Blecker and Ruth Blecker

SHEA, GOULD, CLIMENKO & CASEY
Attorneys for Plaintiff-Intervenor
Robert L. Boehm

DAVIS, POLK & WARDWELL
Attorneys for Defendants
Brittenham, Dunleavy, Erickson,
Geneen, Laughlin, Perry and Westfall

DEBEVOISE, PLIMPTON, LYONS & GATES
Attorneys for Defendants
Bennett, Black, Brown, Hill,
Lannan, Perkins, Pierson, McCone,
Day, Elfers, Lester, Schoen, and
Williams

PAUL, WEISS, RIFKIND, WHARTON & GARRIS
Attorneys for Defendants
Rohatyn, Lazard Freres & Co.,
Lazard Freres Et Cie, Mediobanca
S.p.A., and Les Fils Dreyfus Et
Cie, S.A.

COVINGTON & BURLING
Attorneys for International
Telephone and Telegraph
Corporation

DRAFT: 10/12/76

A285

RELEASE

International Telephone and Telegraph Corporation ("ITT"), a Delaware corporation, in exchange for the consideration described in a Stipulation of Settlement dated October , 1976, receipt whereof is hereby acknowledged, releases and discharges R.E. Bennett, Eugene R. Black, Raymond L. Brittenham, George R. Brown, F.J. Dunleavy, R.F. Erickson, H.S. Geneen, Arthur M. Hill, J. Patrick Lannan, R.N. Laughlin, Ted B. Westfall, Richard S. Perkins, Warren Lee Pierson, F.G. Rohatyn, Hart Perry, John A. McCone, Pomeroy Day, William Elfers, J.V. Lester, H.P. Schoen, H.V. Williams, Anthony J.A. Bryan, Alvin E. Friedman, Frederick C. Hamilton, Lyman C. Hamilton and Herbert C. Knortz and their heirs, representatives, agents, attorneys, successors and assigns, and all of ITT's past and present officers, directors, affiliates, subsidiaries, employees, agents and attorneys and their representatives, agents, attorneys, successors and assigns from any and all claims of any nature or description which ITT has or may have against them or any of them in connection with or arising out of the matters, transactions and occurrences recited, described or referred to in the pleadings and proceedings in Shapiro v. Black et al. (Sup. Ct. N.Y. Co., Index No.) or in any of the actions identified as the "Derivative Actions" in

the aforesaid Stipulation of Settlement dated October , 1976.

This release may not be changed orally.

Dated: , 1976

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

By_____

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On , 1976, before me personally came , known to me, who, being sworn, said that he resides at ; that he is the of International Telephone and Telegraph Corporation, the corporation described in, and which executed, the foregoing release; that he knows the seal of the corporation; that the seal affixed to the release is the corporate seal; and that the seal was affixed and he signed his name to the release by order of the Board of Directors of the corporation.

_____
Notary Public

DRAFT: 10/12/76

A287

RELEASE

International Telephone and Telegraph Corporation ("ITT"), a Delaware corporation, in exchange for the consideration described in a Stipulation of Settlement dated October , 1976, receipt whereof is hereby acknowledged, releases and discharges Lazard Freres & Co., Lazard Freres Et Cie, Mediobanca S.p.A., and Les Fils Dreyfus Et Cie, S.A. and their past and present officers, directors, affiliates, subsidiaries, partners, employees, agents and attorneys and their heirs, representatives, agents, attorneys, successors and assigns from any and all claims of any nature or description which ITT has or may have against them or any of them in connection with or arising out of the matters, transactions and occurrences recited, described or referred to in the pleadings and proceedings in Shapiro v. Black et al. (Sup. Ct. N.Y. Co., Index No.) or in any of the actions identified as the "Derivative Actions" in the aforesaid Stipulation of Settlement dated October , 1976.

This release may not be changed orally.

Dated: , 1976

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

By _____

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On , 1976, before me personally came , known to me, who, being sworn, said that he resides at ; that he is the of International Telephone and Telegraph Corporation, the corporation described in, and which executed, the foregoing release; that he knows the seal of the corporation; that the seal affixed to the release is the corporate seal; and that the seal was affixed and he signed his name to the release by order of the Board of Directors of the corporation.

Notary Public

DRAFT
10/12/76

At a Special Term, Part , of the Supreme Court of the State of New York, held in the County of New York at the County Courthouse on October , 1976.

- -x

MORRIS SHAPIRO,

Plaintiff,

-and-

ELIAS AUERBACH, BENJAMIN BERNSTEIN, LOUIS BLECKER, RUTH BLECKER and ROBERT L. BOEHM,

Plaintiffs-Intervenors,

-against-

Index No.

E. R. BLACK, G.R. BROWN, HAROLD S. GENEEN, POMEROY DAY, WILLIAM ELFERS, J.V. LESTER, HART PERRY, H.P. SCHOEN, R.E. BENNETT, R.F. ERICKSON, F.J. DUNLEAVY, A.E. FRIEDMAN, R.L. BRITTENHAM, J.A. McCONE, J. PATRICK LANNAN, R.N. LAUGHLIN, R.S. PERKINS, FELIX G. ROHATYN, T.B. WESTFALL, H.V. WILLIAMS, ARTHUR M. HILL, WARREN LEE PIERSON, ANTHONY J.A. BRYAN, ALVIN E. FRIEDMAN, FREDERIC C. HAMILTON, LYMAN C. HAMILTON, HERBERT C. KNORTZ, LAZARD FRERES & CO., LAZARD FRERES ET CIE, MEDIOBANCA BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., and INTERNATIONAL TELEPHONE & TELEGRAPH CO.,

Defendants.

- -x

ORDER

Upon the annexed Stipulation of Settlement dated October , 1976, the annexed Notice of Settlement Hearing to all present stockholders of International Telephone and

Telegraph Corporation ("ITT") and the pleadings herein; and it appearing that the proposed disposition embodied in the annexed Stipulation of Settlement may be a fair and proper one, and that an inquiry should be made into the facts to enable the Court to determine whether the same should be approved by the Court;

IT IS ORDERED as follows:

1. , of , an attorney and counsellor-at-law, is hereby appointed Referee to hear testimony and take evidence as to the merits of the proposed settlement and to report to the Court his opinion whether the proposed settlement and compromise of this action is fair, reasonable and adequate and should be approved by the Court.

2. The fees and expenses of the Referee shall be paid by .

3. Upon the filing of the report of said Referee, this Court shall, upon application, fix a time and place for a hearing upon that report (the "Hearing") before the undersigned justice for the purpose of determining whether the Stipulation of Settlement is fair, reasonable and adequate and should be approved by the Court and whether a final judgment should be entered in accordance with the terms and pro-

visions of the Stipulation of Settlement.

4. At the Hearing, each present shareholder of ITT may show cause, if any he has, why the Stipulation of Settlement should not be approved as fair, reasonable and adequate and why this action should not be dismissed with prejudice to ITT and all of its shareholders and may present any evidence that is admissible and relevant to such issues; provided, however, that except by special permission of the Court for good cause shown no such shareholder will be heard and no papers or briefs submitted by him will be received or considered by the Court at or in connection with the Hearing unless such shareholder files prior to , 1976, a written statement setting forth the name and address of the shareholder, his shareholdings in ITT, and a notice of his intention to appear, together with copies of such papers and brief, if any, with the Clerk of this Court and serves copies of said papers upon Pomerantz Levy Haudek & Block, 295 Madison Avenue, New York, New York 10017; Shea, Gould, Climenko, Kramer & Casey, 330 Madison Avenue, New York, New York 10017 Davis, Polk & Wardwell, One Chase Manhattan Plaza, New York, New York 10005; Debevoise, Plimpton, Lyons & Gates, 299 Park Avenue, New York, New York 10017; Paul, Weiss, Rifkind, Wharton & Garrison, 345 Park Avenue, New York, New York 10022; and Covington & Burling, 888 Sixteenth Street,

N.W., Washington, D.C. 20006. Any shareholder of ITT who fails to object to the settlement and dismissal of this action in the manner prescribed above shall be deemed to have waived, and forever shall be foreclosed from raising, any objection thereto.

5. ITT shall give notice of the Hearing (substantially in the form annexed as Exhibit C to the Stipulation of Settlement) to each shareholder of record of ITT at the close of business on , 1976, by mailing said notice, on or before , 1976, postage prepaid, to each such person at such address as is registered on the stock transfer books of ITT for each such shareholder.

6. ITT shall cause to be filed in this Court on or before the date of the Hearing proof of mailing as herein provided.

7. If the settlement and dismissal as provided in the Stipulation of Settlement shall not be approved and consummated, the Stipulation of Settlement and all proceedings had in connection therewith shall be without prejudice to the status quo ante rights of any and all parties to this action.

8. Without regard to the expiration of any term of this Court, the undersigned Justice shall retain jurisdiction

of this action and of all applications and proceedings relating to said Stipulation of Settlement and all proceedings connected with or necessary for the consummation of said Stipulation of Settlement in the event that it is approved and confirmed, including orders fixing allowances covering attorney's fees and expenses and Referee's fees and expenses.

J.S.C.

CONSENTED TO:

MORDECAI ROSENFELD and POMERANTZ
LEVY HAUDEK & BLOCK
Attorneys for Plaintiff

BENNET FRANKEL
Attorney for Plaintiff-Intervenor
Elias Auerbach

LAWSON F. BERNSTEIN
Attorney for Plaintiff-Intervenor
Benjamin Bernstein

NETTER & SPIEGEL
Attorneys for Plaintiffs-Intervenor
Louis Blecker and Ruth Blecker

SHEA, GOULD, CLIMENKO & CASEY
Attorneys for Plaintiff-Intervenor
Robert L. Boehm

DAVIS, POLK & WARDWELL
Attorneys for Defendants
Brittenham, Dunleavy, Erickson,
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DEBEVOISE, PLIMPTON, LYONS & GATES
Attorneys for Defendants
Bennett, Black, Brown, Hill
Lannan, Perkins, Pierson, McCone,
Day, Elfers, Lester, Schoen, and
Williams

PAUL, WEISS, RIFKIND, WHARTON & GARRIS
Attorneys for Defendants
Rohatyn, Lazard Freres & Co.,
Lazard Freres Et Cie, Mediobanca
S.P.A., and Les Fils Dreyfus Et
Cie, S.A.

COVINGTON & BURLING
Attorneys for International
Telephone and Telegraph
Corporation

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MORRIS SHAPIRO,

Plaintiff,

-and-

ELIAS AUERBACH, BENJAMIN BERNSTEIN, LOUIS BLECKER, RUTH BLECKER and ROBERT L. BOEHM,

Plaintiffs-Intervenors,

-against-

E.R. BLACK, G.R. BROWN, HAROLD S. GENEEN, POMEROY DAY, WILLIAM ELFERS, J.V. LESTER, HART PERRY, H.P. SCHOEN, R.E. BENNETT, R.F. ERICKSON, F.J. DUNLEAVY, A.E. FRIEDMAN, R.L. BRITTENHAM, J.A. McCONE, J. PATRICK LANNAN, R.N. LAUGHLIN, R.S. PERKINS, FELIX G. ROHATYN, T.B. WESTFALL, H.V. WILLIAMS, ARTHUR M. HILL, WARREN LEE PIERSON, ANTHONY J.A. BRYAN, ALVIN E. FRIEDMAN, FREDERIC C. HAMILTON, LYMAN C. HAMILTON, HERBERT C. KNORTZ, LAZARD FRERES & CO., LAZARD FRERES ET CIE, MEDIOBANCA BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., and INTERNATIONAL TELEPHONE & TELEGRAPH CO.,

Defendants.

NOTICE OF SETTLEMENT HEARING

To: All Present Shareholders of International Telephone and Telegraph Corporation

PLEASE TAKE NOTICE that pursuant to an Order of the Supreme Court of the State of New York, County of New York filed October , 1976, a hearing (the "Hearing") will be held in Room , County Courthouse, Pearl and Centre Streets, New York, New York at .m., on , 1976,

for the purpose of determining whether a proposed settlement and compromise of this action, which is a derivative action brought on behalf of International Telephone and Telegraph Corporation ("ITT") and includes substantially all the allegations previously made or proposed to be made in six separate derivative actions (the "Derivative Actions"), is fair, reasonable and adequate and should be approved by the Court. The Hearing may be adjourned from time to time by the Court on the date of the Hearing or at any adjourned session thereof without further notice.

A copy of the Stipulation of Settlement, dated October , 1976, setting forth the terms and provisions of the proposed settlement and compromise is annexed hereto. Briefly summarized, the settlement provides for payment to ITT by or on behalf of the defendants other than ITT of a total amount of $1,000,000, and further provides that defendant Mediobanca S.p.A. ("Mediobanca") will not file any claim in connection with a proposed settlement of a class action against ITT and others (the "Herbst action") pending in the United States District Court for the District of Connecticut.

The Stipulation of Settlement provides that the consideration furnished to ITT pursuant to the Stipulation of Settlement shall constitute full and final settlement, satisfaction and discharge of any claims asserted or which might have been asserted in this action, and of all claims of

any nature or description which ITT has or might have against any of the defendants in connection with or arising out of the matters, transactions and occurrences recited, described or referred to in the pleadings and proceedings in this action. If the settlement is approved, this action will be dismissed with prejudice to ITT and all of its shareholders, and the defendants, and each of them, and all of their present and former directors, officers, employees, affiliates, subsidiaries, partners, agents and attorneys will be discharged from all claims which ITT has or may have in connection with or arising out of any of the matters, transactions or occurrences alleged or which might have been alleged in the pleadings and proceedings in this action. In addition, as part of the settlement, ITT will deliver to the defendants other than ITT and to all present directors of ITT releases with respect to any and all claims of any nature or description which ITT has or may have against them or any of them in connection with or arising out of the matters, transactions and occurrences recited, described or referred to in the pleadings and proceedings in this action or in any of the Derivative Actions.

If the settlement is approved, ITT will pay the fees, disbursements and expenses of the attorneys for plaintiff and plaintiffs-intervenors in this action for services rendered and expenses incurred in this action and in the Derivative Actions in such amounts as the Court in its discretion shall award.

At the Hearing, any present shareholder of ITT may appear in person or by attorney and show cause, if any he has, why the Stipulation of Settlement should not be approved as fair, reasonable and adequate and why this action should not be dismissed with prejudice to ITT and all of its shareholders and may present any evidence that is admissible and relevant to such issues; provided, however, that, except by special permission of the Court for good cause shown, no such shareholder shall be heard and no papers or briefs submitted by or on behalf of any such shareholder shall be received or considered by the Court unless, on or before .m. on , 1976, a written statement setting forth the name and address of the shareholder, his shareholdings in ITT, and a notice of his intention to appear, together with copies of such papers and briefs, if any, are filed with the Clerk of this Court with proof of service upon Shea, Gould, Climenko & Casey, 330 Madison Avenue, New York, New York 10017; Pomerantz Levy Haudek & Block, 295 Madison Avenue, New York, New York 10017; Davis, Polk & Wardwell, 1 Chase Manhattan Plaza, New York, New York 10005; Debevoise, Plimpton, Lyons & Gates, 299 Park Avenue, New York, New York 10017; Paul, Weiss, Rifkind, Wharton & Garrison, 345 Park Avenue, New York, New York 10022; and Covington & Burling, 888 16th Street, N.W., Washington, D.C. 20006. Any shareholder of ITT who fails to object to the settlement and the dismissal of this action in the manner prescribed above shall be deemed to have waived, and shall

be foreclosed from raising, any objection to the settlement hereinafter described or any judgment or order entered pursuant thereto.

Description of the Litigation

Background Facts

This action and all six of the Derivative Actions arise out of or relate to a transaction whereby ITT sold 1,741,348 shares of common stock of Hartford Fire Insurance Company ("Hartford") to Mediobanca pursuant to a contract dated November 3, 1969. Prior to its execution, this contract was submitted to the Internal Revenue Service ("IRS"). The IRS issued ruling letters dated October 13 and 21, 1969, the second of which related to the proposed contract. Subsequent to the consummation of the ITT-Mediobanca transaction, on May 26, 1970 ITT made an offer (the "Exchange Offer") to the shareholders of Hartford to acquire common stock of Hartford owned by them in exchange for ITT Series N Preferred Stock. After reviewing the IRS's ruling letters, tax counsel for Hartford and tax counsel for ITT gave opinions, on the terms and conditions stated therein, which were reported in the Exchange Offer, to the effect that the exchange would qualify as a B Reorganization and that, for federal income tax purposes, (i) no gain or loss would be recognized to Hartford shareholders who exchanged their Hartford stock pursuant to the Exchange Offer and (ii) the basis of the ITT shares received by the

Hartford shareholders would be the same as the basis of the shares of Hartford common stock surrendered in exchange therefor.

Virtually all of the common stock of Hartford, including the 1,741,348 Hartford shares owned by Mediobanca, was exchanged for ITT Series N Preferred Stock pursuant to the Exchange Offer. Thereafter, Mediobanca resold the 1,741,348 shares of ITT Series N Preferred Stock which it had obtained pursuant to the Exchange Offer. These resales by Mediobanca determined the price paid by Mediobanca to ITT for the Hartford shares, under the ITT-Mediobanca contract dated November 3, 1969.

On March 6, 1974, the IRS revoked retroactively its rulings of October 13 and 21, 1969, and took the position that the exchange of shares by Hartford shareholders pursuant to the Exchange Offer was a taxable event. Certain Hartford shareholders were requested by IRS to sign waivers of the Statute of Limitations and notices of statutory deficiencies were served on certain Hartford shareholders. ITT is opposing the efforts of the IRS to assess taxes against the former Hartford shareholders arising from their participation in the Exchange Offer and various cases are pending which are separate from the above-captioned actions and the Derivative Actions, in which the issue of taxability is being contested.

By letters dated March 11, 1974 and April 4, 1974, ITT has informed former Hartford shareholders that under the terms stated therein and in the event the exchange were ultimately adjudicated to be taxable, ITT would reimburse

any former Hartford shareholder whose net overall tax liability with interest (taking into account any other years involved) is increased as a result of the imposition of taxes on the exchange of his shares.

This Action and the Derivative Actions

The above-captioned action was originally commenced by plaintiff, Morris Shapiro, in this Court, as a derivative action on behalf of ITT. Pursuant to order dated October , 1976, plaintiffs-intervenors, who are the plaintiffs in the other five Derivative Actions, were permitted to intervene in this action, and the complaint was amended to include all of the parties named or proposed to be named and substantially all of the allegations made or proposed to be made in the original complaint in this action and in the other five Derivative Actions on behalf of ITT, which are as follows:

1. Auerbach v. Brown, et al., pending in the Supreme Court of the State of New York for the County of Westchester (the "Auerbach-N.Y. action").

2. Auerbach v. Day, et al., pending in the Court of Chancery of the State of Delaware for the County of New Castle (the "Auerbach-Del. action").

3. Bernstein v. Mediobanca, et al. pending in the United States District Court for the Southern District of New York (the "Bernstein action").

4. Blecker et al. v. Lazard Freres & Co., et al., pending in the United States District Court for the Southern District of New York (the "Blecker action").

5. Boehm v. Bennett, et al., commenced in the United States District Court for the Southern District of New York and now pending in the United States District Court for the District of Connecticut (the "Boehm action").

The original complaint in this action and the Auerbach-Del., Blecker and Boehm actions allege, in substance, that if ITT makes or is required to make any payment to the Hartford shareholders as a result of the Exchange Offer or reimburses or is required to reimburse any Hartford shareholder for taxes assessed as a result of an ultimate determination that the exchange was a taxable event, then the individual defendants (who are present and former directors of ITT), defendant Lazard Freres & Co. ("Lazard") and Mediobanca should reimburse ITT for all such payments and tax reimbursements.

The Auerbach-N.Y. action alleges, in substance, that Lazard or a partner of Lazard who is a director of ITT received certain fees in connection with the ITT-Mediobanca transaction, and that these fees should be refunded to ITT.

The Bernstein and Blecker actions allege, in substance, that certain resales of the ITT Series N Preferred Stock acquired by Mediobanca as a result of the Exchange Offer were made on terms and under circumstances which constituted a fraud upon ITT, and that ITT is entitled to recover damages

for this alleged fraud from Mediobanca, Lazard, defendant Lazard Freres Et Cie of Paris, and defendant Les Fils Dreyfus Et Cie, S.A. of Basle, Switzerland.

The above-captioned action will be dismissed with prejudice to ITT and all its shareholders if the proposed settlement described herein is approved. Since all of the parties and substantially all the allegations in the other five Derivative Actions are included in the amended complaint in this action, and since the release to be issued pursuant to the proposed settlement encompasses any and all claims of any nature and description which ITT has or may have in connection with or arising out of the matters, transactions and occurrences recited, described or referred to in the pleadings and proceedings in this action or in any of the Derivative Actions, defendants in the other five Derivative Actions intend to move to dismiss them on the merits and with prejudice to ITT and all its shareholders if the settlement described herein is approved. Such motions would be made without further notice to the shareholders of ITT. Plaintiffs in the other five Derivative Actions believe that there would be no grounds for opposition to such motions to dismiss, and do not intend to oppose those motions.

Prior Proceedings

Plaintiffs in the Herbst action, which arises out of or relates to the same transaction as this action and the Derivative Actions, have obtained extensive discovery into the circumstances

surrounding the subject matter of the actions, and the fruits of that discovery have been made available to plaintiffs in the Derivative Actions. Discovery proceedings have also been had in several of the Derivative Actions. Defendants have denied and continue to deny the material allegations of the complaints in the Derivative Actions. The defendants other than ITT deny that they are in any way liable to ITT. On the basis of the extensive discovery had to date, the attorneys for plaintiff and plaintiffs-intervenors have concluded that the compromise and settlement set forth in the Stipulation of Settlement is in the best interests of ITT and its shareholders.

Pending Securities and Exchange Commission Investigation

Certain of the matters involved in the litigation to be disposed of under the Stipulation of Settlement are the subject of an investigation by the United States Securities and Exchange Commission. The investigation has been pending for some time and it is impossible to determine when it will be terminated or what its ultimate disposition will be.

Examination of Pleadings and Papers

The pleadings and other documents in this action are on file with the Clerk of the New York County at the County Clerk's Office, Pearl and Centre Streets, New York, New York, and are available for inspection there during regular business hours. Papers in

the other five Derivative Actions are on file with the Clerks of the Courts in which those actions are pending, and are available for inspection during regular business hours. Copies of deposition transcripts and documents produced by defendants in the Herbst action and the Derivative Actions are available for inspection by any shareholder of ITT or his attorneys during regular business hours at the offices of Pomerantz Levy Haudek & Block, attorneys for plaintiff, 295 Madison Avenue, New York, New York 10017.

Dated: New York, New York
, 1976

INTERNATIONAL TELEPHONE AND
TELEGRAPH CORPORATION

_____

John J. Navin, Secretary

AFFIDAVIT OF MATHIAS L. SPIEGEL DATED JULY 14, 1976 IN OPPOSITION TO MOTION TO CONSOLIDATE THE BOEHM AND HERBST ACTIONS AND TO DISMISS IN BOEHM AS TO THE ITT DIRECTORS, EXHIBIT J TO AFFIDAVIT OF MATHIAS L. SPIEGEL DATED OCTOBER 15, 1976 (pp. A306-A312)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBERT L. BOEHM,

Plaintiff,

-against-

R. E. BENNETT, et al.,

Defendants.

Civil No.

Action No. 2

HILDA HERBST and
AARON M. FINE,

Plaintiffs,

-against-

INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION, et al.,

Defendants.

Civil No. 15,155

Action No. 1

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MATHIAS L. SPIEGEL, being duly sworn, deposes and says:

I am a member of the firm of NETTER & SPIEGEL, attorneys for Louis and Ruth Blecker, objectors in Action No. 1 ("HERBST") and plaintiffs in Blecker v. Lazard Freres

& Co., et al., 73 Civ. 4057 (WCC), Southern District of New York ("BLECKER"). I recently became aware that on or about June 22, 1976 a motion bearing the above caption was filed in this Court on behalf of the plaintiff in Action No. 2 ("BOEHM"). Notice of the motion apparently was given to counsel for all of the derivative suits named in the notice of hearing and stipulation of settlement in Herbst, except my firm. I therefore ask the Court to consider this affidavit as timely.

Blecker, commenced in September of 1973, alleges claims arising out of the acquisition by the International Telephone & Telegraph Corporation ("ITT") of the Hartford Fire Insurance Company ("HARTFORD"). An amended complaint was filed in Blecker on March 11, 1974, approximately three days after the revocation by the Internal Revenue Service of its ruling that the acquisition of Hartford by ITT was tax free. Coincidentally, the complaint in Boehm also was filed on March 11, 1974 There is an identity to the suits.

In May 1976, Boehm was transferred to the District of Connecticut. At the hearing on the proposed settlement in Herbst on June 4, 1976, counsel for Boehm stated to this Court that there was no merit to the derivative

claims against the directors of ITT and that they would not oppose a motion by the directors of ITT to dismiss Boehm as to them based upon the releases provided for in the stipulation of settlement.

I stated to the Court at that time that I disagreed with the conclusions of counsel for Boehm. This Court then inquired of me whether I had any objection to the transfer of Blecker to the District of Connecticut, and, I responded that I did not.

By letter dated June 10, 1976 (Exhibit A) I advised William C. Conner, the District Judge to whom Blecker is assigned, of the dialogue between this Court and myself. In response thereto ITT stated to the Court in New York, that since plaintiffs in Blecker had not moved to transfer the action it was premature to address the issue, for, defendants had by no means consented to any such motion.

I therefore requested that Judge Conner hold a conference which was held on July 9, 1976 and attended by counsel for ITT and Lazard Freres & Co. At the conference the portion of the transcript of the June 4, 1976 hearing in Herbst relating to the transfer of Blecker to the District of Connecticut was read and I confirmed my state-

ments to this Court. I also advised Judge Conner of the Boehm motion and he granted leave to plaintiffs in Blecker to renew their motion to vacate the stay of their action, upon subsequent occurrences in Boehm-Herbst.

In the stipulation and order transferring Boehm to Connecticut, the defendants reserved any defenses they might have with respect to the summons and complaint. If the directors of ITT are no longer named as defendants in Boehm, the complaint in that action is open to attack on the business judgment defense. The defendants have asserted the business judgment defense in a related action in which the ITT directors are not named as defendants, Bernstein v. Mediobanca, et al., 73 Civ. 3549 (WCC), Southern District of New York ("BERNSTEIN"). I attach to the original of this affidavit a copy of an opinion of Judge Conner in Bernstein (Exhibit B) which discusses the business judgment defense as it relates to these suits, and a copy of ITT's papers on its motion for summary judgment in Bernstein (Exhibit C), which motion is sub judice.

A fortiori, if the Boehm motion is granted plaintiff in Boehm no longer can claim that he adequately and fairly represents the shareholders of ITT as required by Rule 23.1(2) Fed. R. Civ. P. A demand to bring Boehm was

not made upon the directors of ITT. The motion itself contradicts the allegations of the Boehm complaint that seek to excuse the failure to have made a demand.

If the Boehm motion is granted as to the ITT directors, it is incumbent upon counsel for ITT to move to dismiss Boehm. I believe this was the basis of Judge Conner's decision to allow plaintiffs in Blecker to renew their motion to vacate the stay of their action.

However, any action by plaintiff or defendants in Boehm should not operate to the detriment of the claims asserted in the prior Blecker action which has been vigorously prosecuted. To avoid unnecessary controversy any order to be entered in Boehm should clearly set forth that it is without prejudice to any rights asserted on behalf of ITT in Blecker.

Bennett Frankel has stated in his affidavit, June 28, 1976, in opposition to the Boehm motion that the request for consolidation and an expeditious trial is premature and makes little sense. I concur. But, if for a reason not apparent to me now, Boehm should be set down for immediate trial (in this regard it should be noted

that Boehm isn't anywhere near ready for trial -- apart from answers and preliminary discovery no depositions nor document discovery having been had) it appears to me that justice and the convenience of the Courts and the parties require that Blecker and Boehm be consolidated, their claims arising out of the same transactional events.

MATHIAS L. SPIEGEL

Sworn to before me this
14th day of July, 1976.

RAE GOTTLIEB
COMMISSIONER OF DEEDS
CITY OF NEW YORK 2-1377
Certificate filed in New York County
Commission expires Oct. 1, 1976

June 10, 1976

Honorable William C. Conner
United States District Judge
Room 3006
United States Court House
Foley Square
New York, New York 10007

Re: Motion for Leave to Amend Complaint
Blecker v. Lazard Freres et al.
73 Civ. 4057 (WCC)

Dear Judge Conner:

During oral argument on plaintiff's objections to the proposed settlement in Herbst v. ITT et al., Civ. 15,155, District of Connecticut ("Herbst") on June 4, 1976, Judge Blumenfeld inquired of me whether there was any objection to this action being transferred to the District of Connecticut.

I replied that following receipt of Lawson Bernstein's affidavit in opposition to plaintiffs' objections I had moved before you for leave to file the second amended complaint referred to in the objections but if the Cout in the Southern District of New York had no objection, I had no objection to the transfer.

The motion appears to be unopposed, answering papers not having been served on us. We respectfully suggest therefore that the motion be decided before the suit is transferred to the District of Connecticut.

Prior to transfer, the Court also may wish to consider whether the proceedings in Herbst and a filing and serving of the second amended complaint provide the requisite "good cause"... "to reconsider those prior rulings" staying this action in favor of Bernstein v. Mediobanca, 73 Civ. 3549 (WCC), as set forth in the penultimate paragraph of its memorandum and order dated December 9, 1975.

Faithfully,

Mathias L. Spiegel

cc: Covington & Burling, Esqs.
Paul Weiss Rifkind Wharton
& Garrison, Esqs.

SUPPLEMENTAL AFFIDAVIT OF MATHIAS L. SPIEGEL, DATED NOVEMBER 19, 1976 IN SUPPORT OF RELIEF PURSUANT TO RULE 65 FED. R. CIV.P.
(pp. A313-A317)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

LOUIS BLECKER, et ano,

Plaintiffs,

-against-

LAZARD FRERES & CO., et al,

Defendants.

----------x

73 Civ. 4057 (WCC)

SUPPLEMENTAL AFFIDAVIT OF MATHIAS L. SPIEGEL WITH REGARD TO MOTION FOR RELIEF PURSUANT TO RULE 65 FED.R.CIV.P.

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MATHIAS L. SPIEGEL, being duly sworn, deposes and says:

I am a member of the firm of Netter & Spiegel, attorneys for plaintiffs Louis and Ruth Blecker. This affidavit with exhibits supplements my affidavit dated October 15, 1976 filed in support of relief sought pursuant to Rule 65 Fed. R. Civ. P.

1. On October 29, 1976, on notice to the defendants, the Hon. William C. Conner, a Judge of the United States District Court for the Southern District of New York, heard

argument on plaintiffs' motion for an order restraining ITT and its directors from proceeding with a proposed settlement in Shapiro v. E. R. Black et al., ("Shapiro") Supreme Court, State of New York, County of New York and, transferring this action and the related action of Bernstein v. Mediobanca et ("Bernstein") 73 Civ. 3549 (WCC) (S.D.N.Y.) to the District of Connecticut.

2. By endorsement dated October 29, 1976 Judge Conner denied the relief sought. Thereto he stated to counsel for the parties that the denial of relief was without prejudice to its renewal if and when this action was transferred to the District of Connecticut where the claims of fraud to avoid judicial inquiry into the matters in suit, as alleged in plaintiffs' pending amended and supplemental complaint, arose. Judge Conner stated further that I should inquire of Judge Blumenfeld whether he was amenable to transfer.

3. Following the hearing of October 29, 1976 I telephoned Judge Blumenfeld's chambers and related the substance of the colloquy before Judge Conner and requested that Judge Blumenfeld speak with Judge Conner.

4. On November 1, 1976 Judge Conner's chambers telephoned me and advised that, this action would be trans-

ferred to the District of Connecticut on the Court's own motion; that a hearing on transfer in Bernstein had been set down for November 12, 1976 and I was invited to attend.

5. On November 1, 1976 Judge Blumenfeld's chambers telephoned me to advise that upon transfer Judge Blumenfeld would entertain an application for the relief sought as set forth in paragraph 1, infra.

6. On November 4, 1976 defendants filed a summons and amended complaint in Shapiro naming plaintiffs in Bernstein and plaintiffs in Boehm v. Bennett et al., ("Boehm") Civil No. 76-H-215 (D.Conn.) as intervenors. (Exhibit A)

7. At the November 12, 1976 hearing on transfer in Bernstein Judge Conner stated that he had spoken with Judge Blumenfeld and that this action was to be transferred to the District of Connecticut as he understood at the hearing on October 29, 1976 that there was no opposition to the transfer.

8. Counsel for defendants responded that they opposed transfer to the District of Connecticut of this action as well as Bernstein on the ground that all claims were being settled in Shapiro; that plaintiffs' counsel had been invited to join in the settlement in Shapiro and had refused.

9. I responded that the settlement in Shapiro had not been negotiated with plaintiffs in this action brought many months prior to Shapiro; that the pending amended complaint in the action charges fraud upon the Court in the inducement of the stay of the action in favor of Bernstein, and the continuation of the stay in favor of Boehm v. Bennett et al., H-76-215 (D. Conn.) presently pending before Judge Blumenfeld.

10. Counsel for plaintiff in Shapiro telephoned me at approximately 5:00 P.M. on October 14, 1976 (summons and amended complaint in Shapiro were to be filed on October 15, 1976, see, Exhibit B, my affidavit dated October 15, 1976). I refused to discuss settlement with him. The following morning Simon H. Rifkind telephoned me and I advised him of my refusal to discuss settlement with plaintiff's counsel in Shapiro. Other than the above referred to telephone conversations I have had no conversations with respect to participation in the Shapiro settlement with plaintiff's counsel in Shapiro or counsel for any of the defendants.

11. In face of the objections of counsel for defendants to the transfer of this action to the District of Connecticut, Judge Conner declined to transfer either this action or Bernstein. Thereto Judge Conner stated

that he had no objection if I sought an order of transfer from Judge Blumenfeld.

12. On November 17, 1976 I met with Judge Blumenfeld in chambers in Hartford, Connecticut, and sought to persuade him to sign the annexed order. (Exhibit B) Judge Blumenfeld declined to sign the said order on the ground that he could not order a coordinate judge to act.

MATHIAS L. SPIEGEL

Sworn to Before me this
19th day of November, 1976.

RAE GOTTLIEB
COMMISSIONER OF DEEDS
CITY OF NEW YORK 2-1377
Certificate filed in New York County
Commission expires Oct. 1, 1978

UNSIGNED PROPOSED ORDER ANNEXED TO AFFIDAVIT OF MATHIAS L. SPIEGEL DATED NOVEMBER 19, 1976 (pp.A318-A324)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LOUIS BLECKER, et ano.,

Plaintiffs,

v.

LAZARD FRERES & CO., et al.,

Defendants.

Civil No. H-76-

ACTION #1

BENJAMIN BERNSTEIN,

Plaintiff,

v.

MEDIOBANCA BANCA diCREDITO FINANZARIO-SOCIETA PER AZIONI, et al.,

Defendants.

Civil No. H-76-

ACTION #2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS BLECKER, et ano.,

Plaintiffs,

v.

LAZARD FRERES & CO., et al.,

Defendants.

73 Civ. 4057 (WCC)

ACTION #1

BENJAMIN BERNSTEIN,

Plaintiff,

v.

MEDIOBANCA diCREDITO FINANZARIO SOCIETA PER AZIONI, et al.,

Defendants.

73 Civ. 3549 (WCC)

ACTION #2

ORDER TRANSFERRING ACTIONS

WHEREAS Action #1 was commenced by the filing of a complaint in the Southern District of New York on September 21, 1973, and;

WHEREAS by order dated January 14, 1974 Action #1 was stayed during the pendency of Action #2 commenced in the Southern District of NewYork on August 15, 1973, and;

WHEREAS on March 11, 1974 an amended complaint was filed in Action #1, and;

WHEREAS on March 11, 1974 Boehm v. Bennett et al. Civ. H-76-251 D.Conn. ("Boehm") was commenced in the Southern District of New York alleging claims substantially identical to the additional claims alleged in Action #1, and;

WHEREAS by order dated May 3, 1974, the stay of Action #1 dated January 14, 1974 was continued during the pendency of Boehm, and;

WHEREAS by order of this Court on consent, dated May 13, 1976, Boehm was transferred to the District of Connecticut, and;

WHEREAS there is pending in the United States District Court for the District of Connecticut an action entitled Hilde Herbst, et al. v. International Telephone & Telegraph Corporation, et al., Civ. No. 15,155 ("Herbst") which action was commenced in that Court on July 6, 1972, and;

WHEREAS Action #1, Action #2 and Boehm are related to Herbst in that there is a virtual identity between the defendants named in the actions, the transactions complained of in the actions are the same, and the relief sought in any one of the actions, if granted, would affect the other actions, and;

WHEREAS the parties to Herbst entered into a Stipulation of Settlement and submitted it to this Court for approval upon notice to the class members on whose behalf the Herbst case is being prosecuted and upon notice to all shareholders of International Telephone and Telegraph Corporation ("ITT"), and;

WHEREAS determination of the application for approval of the Herbst settlement raised issues pertinent to Action #1, Action #2 and Boehm, and;

WHEREAS counsel in Action #1 filed affidavits in opposition to the Herbst settlement as proposed, and;

WHEREAS as counsel in Action #2 and in Boehm filed affidavits and/or statements in support of the Herbst settlement as proposed, and;

WHEREAS on May 28, 1976 a motion for leave to file an amended and supplemental complaint ("Complaint") in Action #1 was filed in the Southern District of New York and annexed to the objections filed in Herbst by plaintiffs in Action #1, which complaint alleges, inter alia, fraud in the inception and continuation of the stay of this action in order to avoid judicial inquiry into the claims

alleged herein having its genesis in Herbst, and;

WHEREAS this Court on August 11, 1976 issued an opinion and order in which it refused to approve the Herbst settlement as proposed on the ground that it would not approve as a part of the proposed settlement releases to be executed by the International Telephone and Telegraph Corporation, on whose behalf Action #1, Action #2 and Boehm are brought, to its directors, which the said directors intended to use in bar of Action #1, Action #2 and Boehm, and;

WHEREAS at a hearing in Action #1 in the Southern District of New York on October 29, 1976 the Court was advised that counsel in Action #2 and Boehm intended to intervene in a subsequent State Court action, Shapiro v. E. R. Black, et al., Supreme Court State of New York, County of New York ("Shapiro") in which an amended and supplemental complaint including the allegations of the complaints in Action #1, Action #2, and in Boehm, was to be filed, and;

WHEREAS the Court was further advised at the hearing in Action #1 on October 29, 1976 that a stipulation of settlement was to be entered into in Shapiro as a part of

which stipulation ITT was to execute and deliver to all past and present officers, directors, affiliates, subsidiaries, partners, employees, agents and attorneys of ITT, Mediobanca, Lazard Freres Co., Lazard Freres et cie, and Les Fils Dreyfus et cie, S.A. releases covering all of the claims in the complaint in Action #1 and the claims set forth in the complaints in Action #2 and in Boehm, and;

WHEREAS on November 1, 1976 the District Court for the Southern District of New York advised this Court that it was amenable to transfer of these actions to the District of Connecticut, and;

WHEREAS on November 4, 1976 a summons and amended and supplemental complaint, naming plaintiffs in Action #2 and Boehm as intervenors was filed in Shapiro, Index No. 20191/76, and;

WHEREAS on November 12, 1976 plaintiff in Action #2 and all defendants opposed the said transfer, and;

WHEREAS the Court for the Southern District of New York has advised all counsel and this Court that it would consent to the said transfer if this Court concluded

that the questions raised in the complaint should be decided in this District, and;

WHEREAS this Court has concluded that the questions raised in the complaint should be decided in this District, where, as alleged in the complaint, the fraud had its inception, and;

WHEREAS it appears that Action #1 and Action #2 could have been brought in this District and that a transfer of the actions will facilitate the expeditious disposition of the litigation and will serve the interests of justice, now, therefore

IT IS ORDERED, pursuant to 28 U.S.C. § 1404 (a), that these actions be transferred forthwith to the United States District Court for the District of Connecticut (Hartford).

Dated: Hartford, Connecticut

November , 1976

_____

U. S. D. J.

LETTER OF MATHIAS L. SPIEGEL TO HON. WILLIAM C. CONNER, DATED DECEMBER 23, 1976 (pp. A325-A327)

December 23, 1976

Hon. William C. Conner
United States District Judge
United States Courthouse
Foley Square
New York, New York 10007

Re: Blecker v. Lazard-Freres
73 Civ. 4057 (WCC)
Court of Appeals Docket No. 76-7574

Dear Judge Conner:

A pre-argument appellate conference was held in the above matter on December 21, 1976.

In the course of argument I stated to counsel that the need for the appeal might be obviated if the District Court would decide the pending motion to vacate the stay of this action in favor of Bernstein v. Mediobanca, ("Bernstein") 73 Civ. 3549 (WCC). Thereto I renew my request, previously made to you, at hearings in this matter and in Bernstein on October 29, 1976 and November 12, 1976 respectively for a determination of the motion.

By stipulation dated November 4, 1976 the parties to Shapiro v. E. F. Black, et al., ("Shapiro") Supreme Court of the State of New York, County of New York, Index No. 20191/76, agreed to a settlement of that action; that settlement was the subject of the application in this action for a temporary restraining order and preliminary injunction argued before you on October 29, 1976, denied by endorsement and filed on November 3, 1976.

By order dated November 22, 1976 the Hon. Abraham J. Gellinoff allowed the parties in Shapiro to file an amended and supplemental complaint purporting to embody the claims contained in this action and; allowed plaintiffs in Bernstein and

in Boehm v. Bennett, et al., Civ. No. H-76-251, District of Connecticut, to intervene as parties plaintiff. Judge Gellinoff also appointed a referee to take evidence and report on the fairness, reasonableness and adequacy of the proposed settlement.

On November 29, 1976 and again on December 6, 1976 hearings were held before the referee in Shapiro. Thereafter the parties in Shapiro submitted a memorandum in support of the settlement. Plaintiffs in Blecker filed a response to the proposed settlement in Shapiro which set forth the pending appeal in this action and concluded that:

> "the Federal Court will not recognize the jurisdiction of this Court over the well pleaded allegations of the Blecker complaint."

Thereto Blecker argued that the State Court should not lend its process to the settlement of the claims alleged in Blecker for to do so could only infect the settlement of all of the actions arising out of the Mediobanca transactions. The Bleckers' response in Shapiro stated with respect to the Bernstein-Blecker claims, that Blecker alleged a claim of waste as to the directors of ITT not contained in Bernstein, nor did the Shapiro amended and supplemental complaint give the State Court jurisdiction over the claims of fraud to avoid judicial inquiry into the matters alleged in Blecker presently pending before this Court.

In their memorandum in support of the proposed settlement, plaintiff's counsel in Shapiro stated:

> "The new claims of fraud asserted in the proposed Blecker second amended complaint which he has sought leave to file in the District Court are not covered by the amended and supplemental complaint [Shapiro]."

Hon. William C. Conner December 23, 1976

ITT in its memorandum in opposition to the pending motion to vacate the stay of this action, dated August 13, 1976, makes no substantive argument as to why the motion should be denied.

ITT quotes from plaintiff's affidavit in Boehm, dated July 14, 1976, that this Court had:

> "granted leave to plaintiffs in Blecker to renew their motion to vacate the stay of their action upon subsequent occurrences in Boehm-Herbst"

and then states:

> "no subsequent occurrences have come to pass."

(Copy of ITT Memorandum in Opposition to Motion to Vacate Stay and exhibit annexed).

Material "subsequent occurrences have come to pass," to wit, Judge Blumenfeld's opinion and order in Herbst v. ITT et al., Civ. 15,155, District of Connecticut, dated August 11, 1976, and the filing of the amended and supplemental complaint in Shapiro on November 22, 1976.

Plaintiffs in Blecker find themselves between "rock and a hard place." On the one hand they have not been able to effectively act with respect to the settlement in Shapiro because their action is stayed in favor of Bernstein. On the other hand, this Court, has not yet decided their pending motion for leave to file an amended and supplemental complaint alleging fraud upon the Court in the inducement of the stay.

It is respectfully submitted that equity and justice would be served in these difficult suits if this Court would decide the motions presently pending before it in Blecker prior to the date of argument on the pending appeal, February 28, 1977.

Faithfully,

MLS/ab
Enc.
cc: All Counsel
Hon. Nathaniel Fensterstock

Mathias L. Spiegel

ORDER OF HON. ABRAHAM J. GELLINOFF, ON CONSENT, ALLOWING INTERVENTION IN SHAPIRO OF PLAINTIFFS IN BERNSTEIN AND IN BOEHM, AND THE FILING OF AN AMENDED AND SUPPLEMENTAL COMPLAINT, DATED NOVEMBER 22, 1976 (pp. A328-A330)

At a Special Term, Part II, of the Supreme Court of the State of New York, held in the County of New York at the County Courthouse on December 27, 1976.

ABRAHAM J. GELLINOFF

MORRIS SHAPIRO,

Plaintiff,

-and-

ELIAS AUERBACH, BENJAMIN BERNSTEIN and ROBERT L. BOEHM,

Plaintiff-Intervenors,

-against-

E. R. BLACK, G. R. BROWN, HAROLD S. GENEEN, POMEROY DAY, WILLIAM ELFERS, J.V. LESTER, HART PERRY, H.P. SCHOEN, R.E. BENNETT, R.F. ERICKSON, F.J. DUNLEAVY, A.E. FRIEDMAN, R.L. BRITTENHAM, J.A. McCONE, J. PATRICK LANNAN, R.N. LAUGHLIN, R.S. PERKINS, FELIX G. ROHATYN, T.B. WESTFALL, H.V. WILLIAMS, ARTHUR M. HILL, WARREN LEE PIERSON, LAZARD FRERES & CO., LAZARD FRERES ET CIE, MEDIO-BANCA di CREDITO FINANZIARIO-SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., and INTERNATIONAL TELEPHONE AND TELEGRAPH CORP.,

Defendants.

Index No. 20191/1976

ORDER

Upon the consent of the undersigned;

IT IS ORDERED as follows:

1. Elias Auerbach, Benjamin Bernstein and Robert L. Boehm are hereby permitted to intervene as parties plaintiff in this action.

2. Plaintiff and plaintiff-intervenors are granted leave to file as their joint pleading the amended and supplemental complaint, a copy of which is annexed hereto, and the material allegations thereof are hereby deemed denied by all the defendants.

3. The caption in this action is hereby amended to read as set forth above in the caption to this order.

J.S.C.

CONSENTED TO:

FILED
JAN 22 1973
NEW YORK
CO. CLERK'S OFFICE

MORDECAI ROSENFELD and POMERANTZ
LEVY HAUDEK & BLOCK
Attorneys for Plaintiff

BENNETT FRANKEL
Attorney for Plaintiff-Intervenor
Elias Auerbach

LAWSON F. BERNSTEIN
Attorney for Plaintiff-Intervenor
Benjamin Bernstein

SHEA, GOULD, CLIMENKO & CASEY
Attorneys for Plaintiff-Intervenor
Robert L. Boehm

DAVIS, POLK & WARDWELL
Attorneys for Defendants Bennett, Dunleavy, Geneen, Laughlin, Lester, Perry, Schoen, Westfall and Williams

DEBEVOISE, PLIMPTON, LYONS & GATES
Attorneys for Defendants Black, Brown, Day and McCone

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Attorneys for Defendants Rohatyn, Lazard Freres & Co., Lazard Freres Et Cie, Mediobanca S.p.A. and Les Fils Dreyfus Et Cie, S.A.

COVINGTON & BURLING
Attorneys for International Telephone and Telegraph Corporation

A 202 Affidavit of Personal Service of Papers — LUTZ APPELLATE PRINTERS, INC.

FEDERAL COURT
SECOND CIRCUIT

Index No.

LOUIS BLECKER
Plaintiffs-Appellants.

- against -

Affidavit of Personal Service

BAZARD FRERES & CO., MEDIOBANCA BANCA DI CREDITO FINANZIARIO SOCIETA PER AZIONI, LES FILS DREYFUS ET CIE, S.A., LAZARD FRERES ET CIE, INT. TELE. AND TELE CORP., R.E. BENNETT,. E.R. BLACK, R.L. BRITTENHAM, G.R. BROWN, E.J. DUNLEAVY, R.F. ERICKSON, H.S. GENREEN, A.M. HILL, J.P. LANNAN, R. NEWTON LAUGHLIN, J.A. McCONE, RS PERKINS H. PERRY, W.L. PIERSON, F.G. ROHATYN,, T.B. WESTFALL,
Defendants-Appellees.

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

I, Reuben A. Shearer *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 211 West 144th Street, New York, New York 10030

That on the **10thc** *day of* **January,** *19***77** *at* **1, 100 Park AVenue; New York, N.Y.**
2, 345 Park Avenue; New York, .N.Y.

deponent served the annexed [signature] *upon*

1, Wormser, Kiely, Allessandroni, Mahoney & McCann
2, Paul, Weiss, Rifkind, Wharton & Garrison

the *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* *herein,*

Sworn to before me, this **10th** *day of* **January,** *19* **77**

[signature]

Reuben Shearer
Reuben Shearer

ROBERT A. BRIN
NOTARY PUBLIC, State of New York
No. 31 0418950
Qualified in New York County
Commission Expires March 30, 1977